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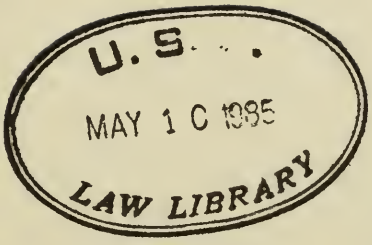
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MILLER'S

COMPILATION

FOR THE USE OF THE

SOUTH-CAROLINA LAW OFFICER.

RULES OF COURT,

FEE BILLS

AND USEFUL FORMS;

WITH NOTES AND REFERENCES.

CHARLESTON, S. C.
PRINTED BY MILLER & BROWNE.
1848.

Entered according to the Act of Congress, in the year 1848, by A. E. Miller, in the Clerk's Office of the District of South-Carolina.

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ERRATA.

To render the Forms more useful, the reader is requested to make the following corrections.

Page 133, line 12, for "there," read *thence*; line 30, for "term," read *turn*.
" 136, line 10, for "sixty dollars with interest on sixty dollars," read *sixty-four dollars and ten cents with interest on sixty dollars.*
" 137, line 22, after "abated, &c." add *on Sum. Pro. docket or other docket.*
" 137, line 27, for "call," read *case*.
" 138, line 17, between "plea;" and "ordered," insert]
" 140, line 15, for "on room," read *in room*.
" 142, line 35, for "required," read *signed*.
" 143, line 3, for "the Court directed," read *the Court having directed*, and expunge *and* in the next line.
" 143, lines 17 & 29, for "adjourned," read *is adjourned*.
" 150, line 2, for "then," read *there*. Line 19, for "filed," read *files*.
" 152, in lines 23 & 27, expunge the "a," in both.
" 153, line 33, insert "and" before *The Common Rules*, and expunge "And" at the beginning of the next line.
" 154, line 19, for "persecutions," read *prosecutions*.
" 155, line 7, place an asterisk at the beginning of the line, and the same before NOTE at the bottom of the page.
" 157, line 20, place an asterisk at the beginning of the line, and before the first NOTE at the bottom of the page.
" 158, line 3, expunge "then." Line 14, for "the plea," read *thy plea*.
" 160, line 7, for "verdict," read *verdicts*.
" 161, line 2, for "nor," read *or*. Line 24, for "in," read *on*.
" 167, line 21, for "the defendant," read (*the defendant.*)
" 174, line 20, insert "in" between *is* and *the*.
" 174, line 21, italicize ("process mesne or final in a civil case.")
" 193, line 21, for "for the location," read *from the location*.
" 206, line 7, for "therewith," read *thereby*.
" 210, line 9, after "crop," insert *his part*.
" 211, line 5, from bottom, for "they" read *there*.
" 218, line 15, for "was left," read *were left*.
" 220, line 3, expunge *on*.
" 224, line 8, add signature, *E. F.*
" 234, line 13, for "for questioning," read *quashing*.
" 235, line 9, after "must return on oath," expunge the period, and make a comma or dash.

ADVERTISEMENT.

In the several Courts of South-Carolina, there have been, at various times, additions to their Rules, alterations and repeals of them; and in some of the Courts, two or more such revisions of them as produced new Tables of Rules, arranged in new form, with new numbers, which superseded all that had before existed. The old Rules are, however, referred to by their numbers in the cases which were decided, whilst they were of force: they are sometimes useful in the explanation of the new, and form a material part of the juridical history of the State, which is in danger of being lost. Of a collection of these Rules published at New-York in 1796,—the oldest extant—only one copy (which is in the possession of Daniel Horlbeck, Esq., Clerk of the Court of Common Pleas for Charleston District) is known to be in existence; and perhaps some separate Rules which were adopted at times between the various revisions, have not been preserved. A re-publication of the whole, so far as they can be obtained, is here made, in such form that the tables which have been superseded may, at a glance, be distinguished from those which are now of force.

The matters which are appended will be found useful. The forms are such as are often needed, and cannot be found collected in any cheap publication.

RULES

OF THE

Court of Common Pleas & General Sessions,

AS THEY WERE PUBLISHED IN 1796: SINCE SUPERSEDED.

Rules and Orders of the Court of Common Pleas in the Province of South-Carolina, established the 4th day of July 1758.

1st. ORDERED, that the Provost Marshal do return all writs served in town two days after service; but if in the country, within six days after service. Return of writs

2d.* That in all actions personally served by the Provost Marshal, the defendants shall give bail for their appearance respectively, at the return of the writs; and if at the return of such writ, or within ten days after, the plaintiffs, or their attorney, shall shew to the Court, or to a Judge, at his chambers, probable cause of action; every defendant in such actions, or writ, shall be held to special bail, unless such defendant or his attorney, shall shew better cause to the contrary; and, where no cause of action shall be shewn, or cause not sufficient as aforesaid, the defendant shall be discharged from his bond to the Provost Marshal, upon appearing by his attorney, and filing common bail. Bail.

3d.† Where special bail, in any action, shall be ordered, upon cause shewn as aforesaid, the Clerk shall immediately enter such order on the back of the writ; and if special bail shall not be filed agreeably to such order, then the plaintiff shall have a right to receive an assignment of the defendant's bail bond from the Provost Marshal, who shall assign the same in the words following, *mutatis mutandis*:—"I, the within named A. B., do "hereby assign and set over the within written bond to the within named C. D., the "plaintiff, pursuant to the statute. Witness my hand and seal, this .... day of 17

A.... B....., (L.S.)

"Sealed and delivered in the presence of
"E. F., G. H."

Special bail. Assignment of Bail bond.

And this shall be deemed a good assignment in law to ground an action on such bail bond, the plaintiff observing such other directions as the statute appoints, except the stamps.

4th.‡ That no proceedings shall be carried on in any original action or actions, and upon bail bonds given for appearances in such actions alone, at the same time; but the defendant shall be properly in Court before any declaration shall be filed, or other proceedings had upon such original action or actions. Original actions & actions on bail bond.

5th. That in all such actions as shall be served on defendants, by leaving copies at their houses, with notices, indorsed as the Act of Assembly directs, general imparlance to plead, until the first day of the sitting of the ensuing term, shall be allowed to all such defendants; and the same shall be entered and filed accordingly, provided every such defendant shall file special bail, with the Clerk of the Court, at any time within ten days after the day on which the writ or process against him shall be returnable, or within fourteen days after the return, if the defendant lives one hundred miles from Charleston or upwards. Service by copy left. Special bail.

6th. Affixing the rule to the prison door shall be a good service, if the defendant lives in the country; but if the defendant lives in town, the rule shall be left at the usual place of his abode, or (if an appearance is entered) with his attorney. Service of Rules.

7th. That on affidavit made of the service of the rule to plead, and no plea is filed within the rule, the Clerk shall enter an order for judgment on the record and in the book of rules; and the plaintiff shall then be at liberty to enter up judgment by default. Judgment by default.

Provided, nevertheless, that if the defendant, or his attorney, shall apply to the Court, How set aside.

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* See 24 §, No. 1095, Pub. Laws. † See 9 & 10 § of No. 1395, Pub. Acts.

‡ See 9 & 10 § of No. 1395, Pub. Acts.

at the first sitting, to vacate the said judgment, the same shall be vacated on payment of the plaintiff's costs; the defendant at the same time pleading the general issue, going to trial *instanter*, (if the plaintiff, or his attorney think proper so to do) and submitting to such other terms as the Court, upon the merits of the application, shall see fit to impose.

Time of filing Pleadings.

8th. All pleadings shall be filed within ten days after a rule served on the party to do the act, or his attorney; in default whereof the plaintiff's attorney shall be at liberty to enter up his judgment, or the defendant's attorney his judgment on *non pros.*

Copy & oyer.

9th. That a copy of every deed, bond, or other writing declared on, shall be filed at the Clerk's office at the time of filing the declaration; and the defendant or his attorney, shall have oyer of the original if he thinks fit to demand it.

Non pros for want of declaration.

10th. If the plaintiff's attorney shall not declare before the last day of the Court next after the return of the writ, (being the adjournment day) the defendant's attorney may then enter a rule for the plaintiff to declare in four days, exclusive of the service of the rule, or otherways to suffer *non pros*, and judgment shall be entered accordingly; and the plaintiff shall not have longer time to declare without leave of the Court first had and obtained.

Continuances and Judge's paper.

11th. All causes at issue to be continued, shall be continued by indorsement on the back of the record; and all causes to be tried, demurrers, or other matters to be argued, shall be entered in the Judge's books, or paper of causes, three days before the sitting of the Court.

Scire facias.

12th. Upon the return of all writs of *seire facias*, the defendant shall have fifteen days to plead, exclusive of the day of the return, and of the day of the service of the rule,

Frivolous plea.

13th. If any frivolous or deceitful plea shall be hereafter pleaded in this Court, the adverse party shall not be obliged to demur to the same; but such plea shall, on motion be rejected by the Court, and such judgment or order shall be awarded and given thereupon as shall be agreeable to justice: Provided, nevertheless, that if any plea which shall be objected to as frivolous, shall appear to affect the merits of the cause, the Court, on motion, at the next sitting after filing such plea, may order the parties to demur, and join in demurrer, and give them a day in Court to argue the same.

Attorney not to be bail.

14th. That no attorney be permitted or suffered to be bail for any person whatsoever to the Marshal or Judge, on pain of being struck off the roll; and the Marshal is hereby directed not to take any such bail, or the bail of any officer of the Court, on pain of being severely amerced.

Taxation of costs.

15th. No bill of costs shall be taxed in any cause contested, where the bill exceeds the common costs, without giving notice to the opposite party, or his attorney, in writing.

Notice of trial.

16th. All notices of trial shall be served either personally on the plaintiff or defendant, or their attornies, or left at the dwelling house of such plaintiff or defendant, on at least ten days before the first day of the sitting of the Court after such service; and the cause shall come to trial accordingly, unless the said notice be countermanded within five days after the service thereof.

Docket of Judgments, executions to be entered by Clerk.

17th. That the Clerk of the Court shall keep a book or docquet, in which, at the end of every Court, or term, he shall, without fee or reward, enter the names of the parties of every judgment entered, with the number of the bill or entry of such judgment; and shall reserve a blank column, or columns, in which shall be entered the execution which shall issue on every such judgment, together with the nature of such execution, and the time when the same shall be issued.

Judgment obtained at one term, may be entered in the next term.

18th. If any judgment shall not be entered in the same term or Court, in which the same shall be obtained, the parties shall be at liberty to enter any such judgment on or before the last day of the Court, or term, next ensuing, without paying any other fee or reward for the same, than if such judgment had been entered in the same Court, or term, in which the same was obtained.

Execution, when to be granted.

19th. No writ of execution shall be granted until the expiration of ten days after the motion for judgment, where the service of the original writ was personal; nor until the expiration of thirty days after such motion, where service of the original process was not personal.

Executions where returned, & renewals.

20th. That all writs of execution be returned regularly into the office of the Clerk of the Court, to be there filed and kept; and the said Clerk is hereby ordered not to affix the seal of the Court to any renewed execution, unless the old ones are first delivered to him, to be kept and filed as aforesaid.

Dress of Bar.

21st. That gowns, bands and wigs, be the habit of the gentlemen of the bar, as usual.

Suits against Ex'rs & Adm'rs

22d. Whereas divers suits and actions against executors and administrators, have heretofore been sued and prosecuted in this Court, to the ends that the lands, tenements, and other real estates of their testators and intestates might be subject and made liable to the payment of the several demands of the plaintiff's in such actions: And whereas the de-

fendants in such actions have commonly pleaded that they had fully administered all and singular the personal assets which came to their hands to be administered, and, without any proof of the fact, the plaintiffs have admitted such pleas to be true; and, by the plaintiff's replying that his testator or intestate died seized of lands subject to the payment of the debts, and the defendant's demurring to that plea, judgment has usually and of course been awarded to the plaintiff in the action; but in so much as the admission of such pleas, without some proofs of the facts pleaded, may eventually be injurious to those persons who, by devise, descent, or otherwise, are interested in the lands of the original debtor; and, by fraud or collusion, real assets may be subjected and made liable to the payment of debts before the personal assets are exhausted, and fully administered: *For prevention whereof it is hereby ordered,* That no plea of plene administravit shall, for the future be admitted in any such action, or suit, against executors or administrators; but the defendant pleading such plea, shall be, and he is hereby obliged to file with the same, in the Clerk's office, a full and particular account of his administration upon oath, to the end it may appear to the Court, that the personal assets of the testator or intestate are really and in truth fully administered; and then, if the plaintiff shall think proper to admit the truth of such plea, he shall be at liberty to proceed in the said action to judgment in the ordinary course, and not otherwise: and if any defendant, who shall plead as aforesaid, shall refuse or neglect to support his said plea, by rendering an account of his administration, on oath, in the manner herein before directed, the plaintiff shall be at liberty to take issue upon such pleas, and bring the merits thereof to trial.

23d. Whereas, by an act of the General Assembly of this Province of South-Carolina, renunciations of inheritance, dower, and thirds of feme coverts, in this Province, taken and acknowledged before the Chief Justice of this Province, or before such person, or persons as are authorized by him, are declared to be as effectual and valid in law, to all intents and purposes whatsoever, as any fine passed in due form of law in his Majesty's Court of Common Pleas at Westminster, for conveying of lands in Great-Britain: And whereas, many errors, faults, and abuses have, and may be committed in the drawing and suing out of such renunciation of inheritance, dower, and thirds, by reason that many persons, unskilful in the law, and such as are not under the immediate directions and authority of this Court, do take upon them to draw and sue out such renunciation of inheritance, dower, or thirds, and which may tend greatly to the hurt, prejudice, and disherison of numbers of the good people of this Province; and in as much as if any such abuse, faults or misdemeanors do happen, touching the same, through their ignorance or neglect, no reformation or punishment can be had, they being for the most part persons unknown, and living in remote or obscure places; *It is therefore ordered,* That no renunciations of inheritance, or dower, and thirds, shall be received or allowed by the Court here, unless the same appear to have been sued out by some Barrister at Law, or some of the Attornies of this Court, and subscribed with the name of such Barrister or Attorney, to the intent that if any misdemeanor be committed, the person subscribing such renunciation may be called to answer for it. *And it is further ordered,* that no renunciation of inheritance, dower, or thirds, whatsoever, taken and acknowledged before any commissioner or commissioners, by virtue of any writ of dedimus potestatem to them directed, be allowed to pass, unless the person before whom such acknowledgment was made, or one of them, or some person present when such acknowledgment was made, do personally appear before the Chief Justice of this Province, or one of the Assistant Justices, and be examined upon oath, touching the due execution thereof; which oath shall be enrolled on the back of such writ of dedimus potestatem.

Renunciations of dower and inheritance.

24th. In all other cases wherein no particular Rules are herein before set down, the same method and practice as in the Court of Common Pleas at Westminster, shall be used and practised here, so far as the same be not repugnant, or contrary to the above Rules.

General Sessions and Common Pleas,

ADDITIONS AND ALTERATIONS, BETWEEN 1758 & 1796.

January 20th, 1770.

Insolvent Debtors.

The Court of General Sessions of the Peace, &c. met according to adjournment. Present—Mr. Justice Pringle, Mr. Justice Lowndes, Mr. Justice Doyley.

Ordered, That all persons hereafter applying for the benefit of the Act for the relief of Insolvent Debtors, do cause three days notice to be given to the persons at whose suit they may be in custody, or their attornies, of the time when their imprisonment expires, and the day whereon they intend to move the Court to take their respective petitions into consideration.

A true extract from the Journals.

THOMAS HALL, C. C. G. S.

In the Common Pleas, 28th August 1771.

Posting of Rules.

25th. Whereas, by the sixth Rule of this Court, affixing the rule to the prison door is deemed a good service, if the defendant lives in the country; but the new prison now finished, being in a remote part of the town, affixing the rule to the door thereof, cannot so well answer the purpose intended thereby, as if the same was affixed to some more public place: *It is therefore ordered*, That the clause of the said rule above recited be vacated and done away, and that for the future affixing the rule to the south door of the State-house, when no appearance is entered, shall be deemed a good service, if the defendant lives in the country.

By the Court, JAMES JOHNSTON, C. C. P.

At the adjournment of August Term, 1771.

In the Common Pleas, May Term 1772.

Dockets, call of cases, &c.

26th. Whereas, the several causes depending and at issue in this Court, do seldom receive a trial as early in the Term as might be, owing either to the neglect of the parties, or the non-attendance of their witnesses; by which means the Court and Jury do often sit many hours without doing business, the Terms are prolonged to a greater length than is necessary, and many people are prevented thereby from pursuing their necessary business and private affairs: *It is therefore ordered*, That for the future, the several causes on the docquet, or paper of causes, shall be called over the beginning of every Term, in the order in which they stand in the said docquet, and shall be tried in the said order: and if it shall so happen that the plaintiff in any cause which shall be so called on to be heard, or his attorney, shall not be ready to proceed in the hearing of such cause, that then such cause shall lose its place in the docquet, or paper of causes, and shall stand the last on the list; and when all the causes in the docquet shall have been called over, such causes as lost their place shall be again called over for hearing, in the order in which they shall then stand: and if it shall so happen that the plaintiff, or his attorney, in any cause so called on a second time, shall not then be ready to proceed to a hearing, such cause shall be adjourned until the succeeding Term.

By the Court.

27th. Rules established 26th October 1772, *being adjournment day.*

Present—The Chief Justice, Mr. Justice Coslett, Mr. Justice Murray.

Sum. Pro. Docket.

Ordered, That all causes be tried in a summary way by petition, pursuant to the Circuit Court Law, be entered and numbered in a book to be kept for that purpose by the Clerk of this Court, on or before the first day of every Term, by the plaintiff, or his attorney; and in case they shall fail so to do, the defendant or his attorney, may at any time during the Term, enter the same for a dismission: and after all the petitions are heard, the plaintiff in such causes as are entered for dismission, shall be called; and if they, or any of them, shall not then appear and bring on their, his, or her cause, such cause and petition shall be dismissed, but without prejudice to a future action; and the defendant shall have costs against such plaintiff as shall so make default.

28*th. Rule established 5th of January* 1773, *being Return Day.*

Present—The Chief Justice, Mr. Justice Savage, Mr. Justice Murray.

Discounts in Sum. Pro. cases.

In all causes tried in a summary way by petition, where the defendant has any discount to plead, *It is ordered,* That a copy of the same be served by the defendant upon the plaintiff, or his attorney, ten days before the meeting of the Court.

29*th. Rule established the 5th of January* 1773, *being Return Day.*

Present—The Chief Justice, Mr. Justice Savage, Mr. Justice Murray.

Blank Writs.

Whereas, by the practice of the Court, blank writs are delivered to the attornies thereof by the Prothonotary, and the attornies have sometimes delivered such blank writs to the parties themselves, to be by them filled up at their discretion ; or have sent them into the country, to be used occasionally by persons who are not attornies of this Court, and over whom it hath no immediate authority; whereby the good people of this Province may be greatly oppressed, and many inconveniences arise; *for prevention whereof it is ordered,* that no attorney of this Court do, in future, deliver blank writs to any person whatsoever, on pain of being struck out of the roll.

South-Carolina, in the Common Pleas, 6th July 1773.

Copy of Account to be served on defendant in Sum. Pro. cases.

30th. Whereas, in actions commenced upon book debts, under the summary jurisdiction, the defendant has no opportunity of seeing the account against him until the cause comes on to be tried, which may deprive him of the legal advantage he ought to have in defending himself against such demands ; *for remedy whereof, it is ordered,* that in all such actions brought under the summary jurisdiction in future, the defendant be served with a true copy of the account against him at the same time of the service of the petition and process.

THOMAS KNOX GORDON,
CHARLES MATHEW COSLETT,
JOHN MURRAY.

July 6th, 1785.

Venire.

Ordered, That all writs of venire issued for summoning juries, the service of the summonses, or notices, to such persons as shall be drawn to serve as jurors at any Court of General Sessions or Common Pleas, be proved on oath, before any of the Judges of the said Court, or before any of the Commissioners appointed for taking affidavits and special bail, on the different circuits, by the Sheriffs, or such of their deputies who shall respectively serve such summonses, immediately on their return from serving the same.

Æ. BURKE,
J. F. GRIMKE:

In the Common Pleas, August Term 1786.

Attorneys.

Ruled, That counsel at the bar, addressing themselves to the jury in the trial of causes, shall in future, stand at the lower end, or opposite side of the table, and not on that next to the jury. This is to be observed on circuit as well as in Charleston.

ÆDANUS BURKE,
THOMAS HEYWARD, Junr.
J. F. GRIMKE.

Awards.

Upon the return of an award, or umpirage, a four day rule shall be served upon the party, or his attorney, against whom the award or umpirage shall be made, to shew cause why the award or umpirage should not be confirmed; and if the award or umpirage should be confirmed by the Court, then judgment shall be thereon entered, and execution issued against the body or goods of the party, in the same manner as if a judgment had been obtained by verdict of a jury.

HENRY PENDLETON,
ÆDANUS BURKE,
J. F. GRIMKE.

January Term 1787.

In the House of Representatives, January 30th 1788.

Admission of Attornies.

The Committee appointed to revise the act regulating the admission of Attornies, *Report*, That they have revised the said act, and conferred with the Judges of the Courts of Chancery and Common Pleas thereupon, who have determined, that in case the act should remain in force, petitions for the admission of attornies shall be on the first day of each term; and that two Judges of the Court of Chancery, and one Judge of the Common Pleas, or one Judge of the Court of Chancery, and two Judges of the Court of Common Pleas, shall then meet, and at such meeting examine the merits of the said petitions, and either grant or reject them, as may appear to them proper. The Committee therefore recommend that the act remain unaltered.

Resolved, That this House do agree to the report.

Ordered, That the report and resolution be sent to the Senate for their concurrence.

By order of the House,

JOHN SANDFORD DART, C. H. R.

In the Senate, February 1st 1788.

Resolved, That this House do concur with the House of Representatives in the foregoing report and resolution.

Ordered, That the report and resolution be sent to the House of Representatives.

By order of the Senate,

FELIX WARLEY, C. S.

Extract from the Journals of the House of Representatives.

JOHN SANDFORD DART, C. H. R.

In the Common Pleas—Rules established Monday the 18th February 1788, being adjournment day of January Term 1788.

Present—Mr. Judge Heyward, Mr. Judge Grimke.

Rules.

Whereas, by a rule of this Court, affixing the Rule to the south door of the State-house, when no appearance is entered, and the defendant lives without the limits of Charleston, is deemed a good service; but the State-house being lately unfortunately burnt down, *It is therefore ordered*, that for the future, until the same be re-built, or it shall otherwise be ordered, affixing the rule to the north front of the late Guard-house in Broad-street, in such cases above-mentioned, shall be deemed a good service.

Summary statement for Judges in certain cases.

It is ordered, in future, in all cases upon points of law reserved, demurrers, motions for new trials, or in arrest of judgment, or other matters intended to be argued, the counsel on both sides shall first agree upon and make out a state of the case and facts, particularly setting forth the points to be determined, and deliver in a copy thereof; signed by them, to each of the Judges before whom the same is to be argued, and set down therefor, at least ten days previous to the hearing and arguing of the case.

THOMAS HEYWARD, Jun.
J. F. GRIMKE.

In the Vacation—South-Carolina, April 4th 1791.

Sheriffs' sales.

By the Chief Justice and Judges of the Court of Common Pleas. Whereas, by an act of the General Assembly, entitled, "An Act to amend the several Acts for establishing and regulating the Circuit Courts throughout this State," it is enacted, that no district Sheriff shall sell any property in any private or retired part of his district; but he shall sell the same on the first Monday (and if the sales commenced on that day cannot be concluded on the same, they may be finished on the day following, at the same hours) in each month, between the hours of eleven and three, in Charleston District, and eleven and five in the other districts, at such places in each and every district, as the Judges of the Court of Common Pleas shall appoint, and at no other time or place whatsoever.

It is therefore ordered, That the following places be appointed for making sales of lands, houses and negroes by the district Sheriff, viz:

Charleston, for Charleston District.

Coosawhatchee Court-house for Beaufort District.

Georgetown, for Georgetown District.

Granby and Orangeburgh, alternately, for Orangeburgh District, beginning at Orangeburgh the first month after this order.

The county Court-houses in the several counties in Cheraws, Camden, and Ninety-six districts, respectively, where the property to be sold shall have been taken, except in

Richland county, where the sales shall be made at the State-house in Columbia. And in as much as the obliging Sheriffs to carry household furniture, plantation utensils, carts, wagons, stocks of horses, cattle, &c., and such other kind of personal property, would in some cases, be impracticable, and in many others the expense and hardship attending the removal of them, far exceed the value of such kind of property: *It is therefore ordered*, that in those cases, all such personal effects be sold at the discretion of the Sheriffs, either at the respective plantations, or places where seized, or at the next nearest public place thereto, so as that the most may be made of them, and as may tend to the benefit of the creditors and debtors.

JOHN RUTLEDGE,
JOHN F. GRIMKE,
ELIHU HALL BAY.

South-Carolina, 24th March 1792, *being adjournment of January Term.*

Whereas, by an Act of the General Assembly, entitled, "an Act to amend the several Acts for establishing and regulating the Circuits Courts throughout this State." it is enacted, that no district Sheriff shall sell any property in any private or retired part of his district; but he shall sell the same on the first Monday (and if the sales commenced on that day cannot be concluded on the same, they may be finished on the day following, at the same hours) in each month, between the hours of eleven and three in Charleston District, and eleven and five in the other districts. at such places in each and every district as the Judges of the Court of Common Pleas shall appoint, and at no other time or place whatsoever.

And whereas, the Legislature have erected two other districts, viz: Pinckney and Washington; and it is necessary that the same arrangement should be made for the sale of property by the Sheriffs in the said two new districts: *It is therefore ordered*, that the county Court-houses in the several counties in Pinckney and Washington districts, shall be the places for those districts respectively, for making sales of lands, houses and negroes, by the Sheriffs of those districts.

And in as much as the obliging Sheriffs to carry household furniture, plantation utensils, carts, wagons, stocks of horses, cattle, &c., and such other kind of personal property would in some cases be impracticable, and in many others the expense and hardship attending the removal of them far exceed the value of such kind of property: *It is therefore ordered*, that in those cases all such personal effects be sold at the discretion of the Sheriffs, either at the respective plantations. or places where seized, or at the next nearest public place thereto, so as that the most may be made of them, and as may tend to the benefit of the creditors and debtors.

JOHN RUTLEDGE,
JOHN F. GRIMKE,
ELIHU HALL BAY.

State of South-Carolina, Charleston District—In the Common Pleas, at Chambers in the Vacation, 25th May 1792.

Present—The Chief Justice, Mr. Judge Grimke, Mr. Judge Bay.

Whereas, by an Act of the General Assembly, entitled "an Act to alter and amend the law respecting juries, and to make some additional regulations to the Acts for establishing and regulating the Circuit Courts," the Judges of the Court of Common Pleas are thereby authorized, from time to time, to direct and alter the places where the Sheriffs of the several districts shall make sales of the property ordered to be sold by any process of law, or order of Court, as often as they in their judgment shall deem necessary and convenient, for the purpose of effecting the intention of the Legislature. with respect to public sales; and all sales of mortgaged property shall be made in the several districts at the places fixed by the Judges, and at the times fixed by law for the sale of property under execution. And whereas, Samuel Saxon. Esq., Sheriff of Ninety-six district, hath petitioned the Judges of the said Court to alter the places of sale in his district; suggesting and stating to them a number of inconveniences which may arise, and have already arisen, from the present established mode of holding sales: to remedy which, *it is ordered*, that for the present, instead of selling the property taken in execution in the four counties now composing Ninety-six district, at the several county Court-houses of Edgefield, Abbeville, Laurens, and Newberry, that the sales of all lands. houses, and negroes, taken in the four aforesaid counties, shall be at Cambridge.

And whereas, it is represented to us, by the Sheriff of Camden district, that the places at which sales have been directed to be, and are now holden in the said district, have been found inconvenient and prejudicial: *It is therefore ordered,* that in future, until otherwise allowed, all sales of property, taken in execution in the counties of Fairfield and Richland, shall be at Columbia; and all sales of property, taken in Kershaw, Clarendon, Lancaster and Claremont, shall be at Camden, on the first Monday, and the day following in every month.

And in as much as the obliging Sheriffs to remove household furniture, plantation utensils, carts, wagons, stocks of horses, cattle, and such other kind of personal property, would in some cases, be impracticable, and in many others the expense and hardship attending the removal of them far exceed the value of such property: *It is therefore ordered,* that in those cases such personal effects be sold at the discretion of the Sheriffs, either at the respective plantations, or places where seized, or at the nearest convenient public place thereto, so as that the most may be made of them, and as shall tend to the benefit of the creditors and debtors.

At a meeting and sitting of the Judges, in Columbia, at the conclusion of the Circuits, on the eight day of May, in the year of our Lord one thousand seven hundred and ninety-four, pursuant to the third section of the tenth Article of the Constitution.

Present—The Hon. Ædanus Burke, John Faucheraud Grimke, and Elihu Hall Bay, Esquires, Associate Judges of the State.

Whereas, many inconveniences have arisen from the irregular manner in which law cases have been brought forward in this Court, from the different Circuit Courts:

1st. For remedy whereof, *it is ordered,* That in future every attorney who shall think proper to bring forward any motion against the decision of any of the said Circuit Courts, shall give notice, in writing, to the opposite attorney, (as also to the presiding Judge) before the rising of such Circuit Court, of his intention, specifying therein, particularly, the ground upon which he intends to found his motion.

2d. *And it is further ordered,* That a docquet shall be kept by the Clerk of this Court for entering the said law cases, on which every attorney shall regularly enter such case, and the grounds of the motion, as mentioned in the foregoing Rule, on the first day of the meeting of the Judges, at Columbia, after the conclusion of the Circuits, to the end that the Judges may have before them, at one view, as well all the causes to come before them for argument, as some idea of the merits of each case, to be determined.

3d. *And it is further ordered,* That in every case where notice of any such intended motion shall be given, as above mentioned, the attorney so giving it, shall come forward agreeably to such notice, and prosecute it to effect, agreeably to the terms of notice; and in default thereof, that the other attorney in possession of the case, shall be at full liberty to proceed in like manner as if no notice had ever been given: and where any case shall be adjourned over to Charleston, for fuller or more solid argument, by consent of parties, and permission of the Court, the same shall be prosecuted there, in like manner, at the next succeeding Court; otherwise, the opposite attorney shall be at liberty to proceed in like manner, as if no notice had ever been given. Provided, however, that in all cases where good and sufficient cause is alleged on oath, the Court will, on motion, grant a further convenient time for taking up the argument.

4th. That where any appeal is brought up, from any of the County Courts, if the case complained of turns upon matters of fact, or law and fact blended together, the Circuit Court may direct a new trial at the next succeeding County Court, with directions on points of law. But if such matters complained of turn upon points of law only, then the said Circuit Court to proceed forthwith to give judgment thereon, according to the right and justice of the case. That the Clerk of every Circuit Court do, in future, keep a docquet for such appeals from the County Courts, on which the attorney bringing up the same, shall regularly enter every such appeal, on the first day of every Circuit Court, containing the nature and grounds of the appeal.

5th. That in every case where no form of a writ is particularly provided for in the County Court acts, the same form shall in every case be observed, as nearly as may be, as those made use of in the Supreme Courts of Judicature in this State.

6th. *And it is further ordered*, That a copy of these Rules be sent to the Clerks of the different District Courts, to be affixed up in the respective offices, and also published in the Columbian Gazette, for the information of all concerned.

I, RICHARD LLOYD CHAMPION, Clerk of the Court aforesaid, do certify the foregoing to be be a true copy of the Rules and Orders made in the said Court, taken from the records.

Given under my hand, at Columbia, this 8th day of May 1794.

R. L. CHAMPION.

In the Common Pleas, Charleston District, May Term, June 2, 1794.

Whereas, it has been usual for the attornies of this Court to give the opposite attornies, in causes depending therein, notice of motions for new trial, or in arrest of judgment, or for some other special purpose, without coming forward agreeably to such notice, to prosecute the said motions to effect; by means whereof many cases have been suspended for years, under pretext that some points of law, upon which such cases depend, remain undetermined: for remedy whereof, as far as may be, *it is ordered*, in future, that where any attorney, in any cause depending in this Court, shall give notice of any special motion by which any such cause shall be delayed, or suspended, out of the usual course of proceedings, every such attorney shall give notice, in writing, at least six days before the adjournment day of such Court, of such his intended motion, containing the grounds of the same, and shall serve the Judges with a brief thereof: and in case such attorney shall refuse or neglect to bring forward such motion, and prosecute the same to effect, at the adjournment day, the opposite party shall be at liberty to proceed as if no such notice had ever been given, unless good and sufficient cause, on oath, be shewn to the contrary. *And it is further ordered*, That the attornies in all cases now suspended, or delayed, on account of notices of intended motions of new trials, or for any other special purpose, do, as nearly as may be, conform to the foregoing Rule, otherwise, after the next adjournment day of this Court, the opposite attornies shall be at liberty to proceed in all such cases, in manner aforesaid, as if no such notices had ever been given.

And whereas, great delay in the business of the Court is daily occasioned by reason of the want of the punctual attendance of jurors at the hour to which the Court usually stands adjourned: *It is therefore ordered*, in future, that if any juror, once impannelled and sworn, shall refuse or neglect to attend punctually on the call of the pannel every morning, that the Clerk do note such default, and that such defaulter be forthwith served with a Rule, to shew cause why he should not be fined for such default: and if he should fail to come immediately into Court, and shew cause to the contrary, or if such cause should appear insufficient, then such juror to be fined in the sum of five pounds, proclamation money, agreeably to the Act of Assembly, passed on the fifth day of April, one thousand seven hundred and forty, in addition to the costs of the said rule and service.

Adjournment Day, May Term, 1795, 7th August.

Present—Judges Burke, Waties, and Bay.

Wherever such briefs shall be delivered to the Judges as before directed, the attorney shall, on same day, give the title of the case, in writing, to the Prothonotary, who shall enter it in due order of time, and keep a regular docquet of such cases respectively.

At a meeting of all the Judges, the following Rules were agreed to, and are ordered to be entered as Rules of Court.

1st. That summary process, and writs of inquiry, be taken up from ten to eleven daily.

2d. That as soon as a jury is impannelled, the docquet be called over, and causes tried in their order.

3d. That all special jury causes be marked before the second call of the docquet.

4th. That the docquet be begun to be called a second time the day next after that on which the first call ended.

5th. Respecting calling thirty causes a day: altered by first Rule of 3d of December 1795.

6th. That the pleadings in each cause be produced to the Court when the cause is called a second time, otherwise the cause shall be struck off the docquet.

7th. That every Monday in the term be set apart for hearing arguments on points of law, motions for new trials, and special cases reserved for the opinion of the Court.

State of South-Carolina.

At a meeting and sitting of the Judges, in Columbia, on the conclusion of the Circuits, on the third day of December, in the year of our Lord one thousand seven hundred and ninety-five, pursuant to the third section of the 10th Article of the Constitution.

Present—The Hon. Ædanus Burke, John Faucheraud Grimke, Thomas Waties, and Elihu Hall Bay, Esquires, Associate Judges of the said State.

Whereas, complaints have been made to the Judges, of the great delay of business in the Court of Common Pleas, in Charleston, whereby jurors attending thereon, are unnecessarily detained, at much expense, and to the great detriment of their private affairs; and it appears to the Judges, that a departure from the old Rule, in calling the docquet, which they were induced to make for the accommodation of all parties concerned, has greatly contributed to the delay complained of, and that a recurrence to the said Rule will afford a remedy for the same: *It is therefore ordered*, that in future, the Court in Charleston, will give too calls of the docquet; and at the second call, will proceed therein until some cause shall be met with ready for trial, without any limitation of the number of causes to be called. *It is further ordered*, that in future, the Courts on the Circuits will also give too calls of the docquet, and will require the parties in every cause, to come to trial at the second call, unless good cause be shewn by either party, why the same shall be continued to the next Court; or unless both parties consent to postpone the trial thereof, until all the other causes on the docquet shall be called, tried, or otherwise disposed of, when the cause so postponed may be tried, if there be sufficient time for the same.

Also ordered, That a copy of these Rules be published one month in the State Gazette at Columbia, and in Charleston.

I, Richard L. Champion, Clerk of the said Court, do certify, that the above is a true copy of the Rules and Orders made in the said Court, transcribed from the records.

R. L. CHAMPION.

Additional Rules and Orders for the better regulating the Practice of the Court of Common Pleas in this State. Charleston, March Term 1796.

Whereas, notwithstanding the former rules and regulations of this Court, many inconveniences have happened, by reason of the loose, irregular practice hitherto prevalent in the same, by the attornies bringing forward suits before the record or proceedings have been made up, by means whereof the parties have been frequently surprised into issues and points not originally held out by the opposite parties, as the grounds of action or defence, which of course they were not prepared to support or defend, to the great delay and impediment of justice.

It is therefore ordered, That the respective Clerks of the several districts do not, in future, put, or suffer any cause to be put on the issue docquet, for trial, unless all the proceedings in the cause have been regularly made up, and filed agreeably to the rules and practice of the Court.

And whereas, it has been heretofore customary for the Clerk, at every Court, to transfer all the causes remaining undetermined at a day previous to the docquet for the next succeeding Court, when many of the said causes in the intermediate time have been settled, dismissed, or abated, by the death of one of the parties, or otherwise disposed of, so as to put an end to the controversy; by reason whereof, the said docquets have generally been swelled out or extended to a great and unnecessary length, holding out to the citizens of this State a great multiplicity of causes for trial, when in fact very few were really ready:—

It is therefore further ordered, in future, that no cause be transferred from an old docquet to a new one, for a succeeding Court, unless by the express directions of one of the parties in the suit, or one of the attornies upon record; to the end that the plaintiff may have an opportunity of bringing on such causes, if he thinks proper, and the defendant a similar opportunity of pressing for a non-suit, if he is unnecessarily or improperly delayed: and farther, that no cause, old or new, be put down or entered on the docquet after the opening of the Court on the morning of the day upon which the Court shall begin the second call of the docquet.

It is also ordered, That a docquet be prepared for cases on summary procees; and if the plaintiff does not bring on the cause at the second Court, it is to be dismissed, unless good and sufficient cause be shewn to the contrary: and in every case, in the Circuit Courts, where the plaintiff shall not file his declaration before or during the term next after that to which the writ is returnable, the defendant shall be entitled to a non-suit on the last day of the Court, unless good and sufficient reasons be assigned to the Court for a further time.

And whereas, great inconvenience and delay have heretofore arisen, and still continue to arise, from a practice that has obtained of the gentlemen of the bar, who appear for defendants, and sometimes defendants themselves, taking out of the Clerk's office declarations which have been duly filed: *For remedy whereof, it is ordered,* that the Clerk in future, do not deliver, or suffer to be delivered, or taken out of the office, any declarations whatever, after the same have been filed, and until plea filed and issue joined, or the order for judgment be obtained: that the plaintiff's attorney only shall then be permitted to take out the declaration, who shall, at the time, make a minute thereof in a book to be kept by the Clerk for that purpose; to the end that the Clerk may always be able to account for the declarations which may be taken out of the office: and the defendant or his attorney may, if he chose, call for a copy of the declaration from the Clerk, or take notes thereof, or draw his plea in the office.

ÆDANUS BURKE.
J. F. GRIMKE,
THOMAS WATIES,
ELIHU HALL BAY.

RULES

OF THE

Court of Common Pleas & General Sessions,

MADE JULY 1, 1800; SINCE SUPERSEDED.

Rules to plead.

1. Every rule to plead shall be served upon the defendant's attorney, if an appearance be entered, and he lives within one mile of the Court-house, and if there be no appearance entered, or the defendant's attorney should not live within that distance, it shall be served upon the defendant himself; but if neither live within that distance, affixing the same to one of the front doors of the Court-house, shall be a good service.

Orders for judgment.

2. On affidavit made of the service of the Rule to plead, if no plea be filed within the Rule, the Clerk shall enter an order for judgment on the record, and in the Book of Rules; and the plaintiff shall be at liberty to enter up judgment by default; Provided, that if the defendant or his attorney, shall apply to the Court, on or before the second day of the term next after such order is given to vacate the said judgment, the same shall be vacated on payment of the plaintiff's costs in obtaining such order; the defendant at the same time pleading an issuable plea, and going to trial *instanter* (if the plaintiff, or his attorney, think proper so to do) and submitting to such other terms, as the Court, upon the merits of the application shall see fit to impose.

Pleadings.

3. Replications, and all subsequent pleadings, shall be filed within ten days after service of the Rule on the party to file such plea, or his attorney; in default whereof, the plaintiff's attorney shall be at liberty to take his order for judgment, or the defendant's attorney his judgment on *non pros.*

4. A copy of every deed, bond or other writing, declared on, shall be filed at the Clerk's office, at the time of filing the declaration; and the defendant, or his attorney, shall have oyer of the original, if he thinks proper to demand it, before he shall be required to file his plea; but this demand must be made before the rule to plead expires.

5. If any frivolous or deceitful plea shall be filed, the adverse party shall not be obliged to demur to the same; but such plea shall on motion, be rejected by the Court, and such judgment, or order, shall be awarded thereupon as shall be agreeable to justice.

6. No plea of *plene administravit,* shall be admitted in any action, against executors or administrators, unless the defendant pleading such plea, do file, with the same in the Clerk's office, a full and particular account of his administration, upon oath, with an office copy of the inventory and appraisement of the estate; to the end that it may appear to the Court, that the personal assets of the testator, or intestate, are really administered to the extent pleaded by defendant.

7. Every rule requiring the adverse party to proceed in his pleadings, shall be served or posted, in the manner prescribed by the first rule.

Attornies, &c., not to be bail.

8. No attorney shall be suffered to be bail for any person whomsoever, on pain of being struck off the roll; and the Sheriff is hereby directed not to take any such bail, or the bail of any officer of the Court, on pain of being severely amerced.

Judgments.

9. The Clerks of the respective Courts shall keep a book, or docket, in which, at the end of every Court, they shall, without fee or reward, enter the names of the parties to every judgment entered, with the number of the bill, or entry, of such judgment; and shall reserve a blank column, or columns, in which shall be entered the execution which shall issue on every such judgment, together with the nature of such execution, and the time when issued; and also when such judgment is satisfied.

10. If any judgment shall not be entered in the same term, or Court, in which the same shall be obtained, the parties shall be at liberty to enter any such judgment on or before the last day of the Court or term, next ensuing, without paying any other fee for the same, than if such judgment had been entered in the same Court or term, in which the same was obtained; and no judgment shall be entered up after such second term, without giving a term's notice to the adverse party, or his attorney, of his intention to enter up the same.

11. No judgments obtained at any Circuit Courts, hall be entered up previous to the day of the Court's rising.

12. No writ of execution shall be granted until ten days after motion for judgment, when the service of the original writ was personal, or until the expiration of thirty days after such motion, when the service of the original process was not personal. Executions.

13. All writs of execution shall be returned, regularly, into the office of the Clerk of the Court, from whence they issue, to be there filed and kept in the record; and no Clerk shall affix the seal of the Court to any renewed execution, unless the one previously issued, be first delivered to him to be kept and filed as aforesaid; or unless authorised by a judge's order, granted on proof of the loss of the previous execution.

14. The habit of the gentlemen of the bar shall be black gowns and coats; and no gentleman of the bar shall be heard if otherways habited. Dress.

15. The Clerks, and Sheriffs, shall also wear black coats; and the Sheriffs a cocked hat and sword.

16. No renunciation of inheritance, or dower, or commission to take such renunciation, shall have the seal of the Court affixed to it, unless sued out by some attorney of this Court, and signed with his name. If taken under a commission, one at least of the Commissioners shall make oath before some magistrate, that such commission was duly executed; and all such renunciation and commission shall be duly recorded. Renunciations.

17. All persons applying for the benefit of the acts, for the relief of insolvent debtors, in addition to the notice published in the gazette, shall cause three days notice to be given to the persons, at whose suit they may be in custody, or their attornies, of the day whereon they intend to move the Court to take their respective petitions into consideration. Insolvent Debtors.

18. All issues shall be entered on the docket before the Court meets, on the first day of the term. Docket.

19. All issues entered on the docket shall be called over, and tried in their order as docketted.

20. The Court will call over the docket but once; and they will not call over more than eighty causes on any one day.

21. If any causes remain uncalled, for want of time, they shall stand first in order on the docket of the ensuing term; and the causes that have been called shall stand next in order. The causes newly docketted shall be entered last.

22. If any issue, docketted, shall be called at four Courts, and not tried, the plaintiff shall be called, and if he does not immediately go to trial, he shall be non-suited; unless it shall appear that it had been continued at defendant's motion, or other satisfactory cause shall be shewn to the Court, on oath, to prove it was not postponed from the plaintiff's neglect; or unless the defendant should, at such fourth calling, obtain a further continuance. Nothing in this rule shall be construed to prejudice defendant's right of calling for a non-suit any previous Court.

23. No Clerk shall enter a cause upon the docket until the pleadings are fully made up.

24. No cause shall be entered upon the docket, except by the Clerk, or his Deputy.

25. Causes marked on the docket "plea withdrawn," or "or writ of enquiry," shall not be placed on the docket of the next term, without special permission of the Court.

26. Upon calling the docket, no motion for a continuance shall be granted on the ground of absence of a witness, without an oath, to the following effect, to-wit: That the testimony of the witness will be material to support the action, (or defence) of the party moving, that his motion is not intended for the purpose of delay; but solely, because he cannot with safety to his cause go to trial without such testimony; that he has made use of due diligence to procure the witness, or of such other circumstances, as will satisfy the Court, that the motion is not intended merely for delay. And in all cases where a writ of subpœna has been issued, the original shall be produced, and proof of the service, or of the reason, why not served, indorsed thereon; but if lost, the same proof shall be offered, with the additional proof of the loss of the original subpœna.

27. When the issue is made up, the parties shall be bound to come to trial, at the ensuing term, without a notice of trial.

28. The Clerks shall regularly preserve every docket, as a record of the Court; and on each docket that he shall make out, he shall not only number the causes thereon, but shall mention the number of terms, that they have been at issue.

29. All causes, on which writs of enquiry are to be executed, shall be entered on a docket to be kept in the Clerk's office, for that purpose, on or before the meeting of the Court, on the first day of the term; and no writ of enquiry shall be executed in any case not docketted. Writs of Enquiry.

30. If any rule to plead, should expire during the term; and the defendant fail to plead, the plaintiff may take his order for judgment, docket his cause among the writs of enquiry, and execute his writ of enquiry during the same term, according to the act in such case made and provided.

31. If an appearance has been entered, the plaintiff's attorney shall give notice to the defendant's attorney, previous to executing his writ of enquiry.

32. Writs of enquiry shall be entitled to precedence, according to their order on the docket.

Summary Process.

33. All causes within the summary jurisdiction of this Court, shall be entered on a docket, to be opened in the Clerk's office, for that purpose, on or before the meeting of the Court, on the first day of the term; and no cause shall be heard, if not so docketted. If the plaintiffs do not enter such causes on the docket for trial; the defendants may, at any time, during the term, enter them for dismission; and if the plaintiff does not bring on the cause, at the second Court, he shall be liable to be non-suited, as in cases at issue.

34. The dockets of summary process causes, shall be called by the Court, at its leisure intervals, when the jury is out of Court, or unoccupied.

Oath of parties in Sum. Pro.

35. If the plaintiff in an action, by summary process, shall desire to have the benefit of defendant's oath, he shall state in writing, the points to which he shall require his oath, and serve him with a copy thereof, with notice of such his intention, at least one day before the hearing of the cause; and defendant may either give his answer in writing, to be sworn to before the Clerk, or *ore tenus* in open Court; and if a defendant shall desire the benefit of the plaintiff's oath, he shall proceed to require it in the same manner.

36. In all actions within the summary jurisdiction of this Court, a copy of the deed, note, account, or other cause of action, shall be endorsed on, or annexed to both the copy process and original.

Juries.

37. To all writs of *venire*, issued for summoning jurors, the Sheriff or his Deputy, shall make a return, on oath, before the Clerk of the Court, from which the venire issues, of the service of the summonses, or notices, served on the persons whom he is commanded to summon; and such return shall be made by the Sheriff or such of his Deputies, as shall respectively serve the same immediately on their return from serving them; the Sheriff in his return, shall make one class of those who were summoned personally; a second class of those for whom summonses were left at their houses: and a third of those who could not be found.

38. On calling over the Juries, those of the Common Pleas and Petit Jurors, who answer to their names, shall be alternately, as they answer, impannelled, the first on the Petit, the second on the Common Pleas Jury; but they may be transferred from the one to the other, as the Court shall see necessary.

39. If any Juror, once impannelled, and sworn, shall refuse or neglect, to attend punctually, on the call of the pannel every morning, the Clerk shall note such default; and the defaulter shall be forthwith served with a rule, to shew cause, why he should not be fined for his default. If upon service of such rule, he shall fail to come immediately into Court, to make his excuse, or such excuse should appear to the Court insufficient, such Juror shall be fined according to law.

Awards.

40. Upon the return of an award, or umpirage, a four day rule shall be served upon the party, or his attorney, against whom the award or umpirage, shall be made, to shew cause why the award or umpirage, should not be confirmed; and if the award or umpirage should be confirmed by the Court, then judgment shall be thereon entered, and execution issued against the body, or goods of the party, in the same manner as if a judgment had been obtained on verdict.

Declarations not to be taken from the office.

41. No Clerk shall permit a declaration to be taken from his office, after it is filed, until issue be joined, or an order for judgment obtained. In the former case, the plaintiff only shall be entitled to possession of the pleadings in the latter, the party in whose favor the order for judgmrnt is entered; either party shall be at liberty at any time, to inspect the pleadings, and to take a copy thereof.

Foreclosing mortgages.

42. In suits, on bonds or other papers, secured by mortgage of real estate, the plaintiff shall obtain judgment as in other cases; and if he wishes to have a special order for the sale of the property mortgaged, he shall at any time pending the suit, or after judgment file a suggestion, stating the time when, the parties by and to whom, and the conditions upon which the same were made, and the description, buttings and boundings of the land, and such other particulars as may be necessary, to bring all the circumstances before the Court; and when this is done, he shall serve on the defendant, or his attorney, a ten day rule, to shew cause why such mortgaged estate, should not be ordered to be sold; and upon the return of that rule, he may move the Court for such order.

43. Orders for the sale of mortgaged property to effect a foreclosure in this Court, shall be to the following effect: That if the defendant shall not within ..... days after this date, pay to the plaintiff the full amount of principal, interest, and costs, due by him, on that day, the Sheriff shall proceed to sell the premises on a credit of ..... months, the titles to be signed, but not delivered, until the money be paid according to the terms of sale; and if the amount of the purchase money be not

paid, when due, the Sheriff shall re-sell, by virtue of the same levy, on account of the former purchaser, for cash.

Sheriffs' sales.

44. All Sheriffs sales of lands, houses, and negroes, shall be held, and take place at the Court-houses of the several districts, respectively; and household furniture, plantation utensils, carts, wagons, stock of horses, cattle, and such other personal effects, shall be sold at the discretion of the Sheriffs, either at the respective plantations or places where seized; or at the nearest convenient public place thereto; which place shall always be mentioned in the Sheriff's advertisement.

Motions at the Constitutional Courts.

45. Every attorney, who shall think proper to bring forward any motion against the decision of a Circuit Court, or question on a point of law, shall give notice thereof in writing, with the grounds on which he intends to rest his motion, to the opposite attorney and the presiding judge, before the rising of such Court.

46. Whenever any motion is to be brought before the Judges, at Columbia, or in Charleston, a brief, setting forth so much of the circumstances of the case, as may be necessary to bring fully before the Court, every point to be decided by them, shall be served by the party making the motion, upon each of the Judges upon the opening of the Court, on the first day at Columbia, or three days before the meeting of the Court in Charleston, if the case is to be argued there; the brief shall also contain the grounds on which the party means to rest his motion: and if he means to offer any affidavits to the Court, the adverse party shall be served with copies of them, so as to allow a reasonable time for answering them, or such affidavits shall not be heard. If any party giving notice of his intention to make such a motion, shall fail to comply with this rule, or fail to docket his case before the meeting of the Judges, on the first day, his motion or rule shall be discharged, upon application by the adverse party. No ground of objection in any such case shall be taken by the counsel, which is not expressed, or necessarily implied in the brief and notice.

47. On the first day of the sitting of the Court, either at Charleston or Columbia, the causes in which such notices have been given, shall be entered on the paper of causes; and no cause shall be heard unless so entered.

48. In every case, where notice of any such intended motion shall be given, the attorney who has given it, shall prosecute it to a decision, agreeably to his notice; or the adverse attorney shall be at liberty to proceed in like manner, as if no notice had been given. And in case any cause shall be adjourned from one Court to the other, the same shall be prosecuted in the Court to which it is adjourned, in like manner, at the next succeeding Court; otherwise, the adverse attorney shall be at liberty to proceed in like manner, as if no notice had been given: Provided, nevertheless, that in all cases in which good and sufficient cause shall be shewn, the Court may grant further time for hearing such motion.

49. In calling over the paper of causes in Charleston, or at Columbia, if the party who is to bring forward the motion is not ready, the opposite party shall be heard, and the Court will decide thereon, unless sufficient cause, on affidavit, be shewn to the Court for a postponement; or if the party to oppose the motion be not ready, the party making it shall be heard, and the Court will decide thereon, unless sufficient cause be shewn by affidavit, for a postponement.

50. In all cases in which a party shall receive notice of a motion for a new trial, or in arrest of judgment, he shall have leave, notwithstanding, to enter up his judgment, and lodge his execution to bind property; but if the motion be sustained, the judgment and execution shall be wholly set aside.

51. When the Court is open and sitting, no rule or order shall be granted or made, which can be obtained in course at the Clerk's office, unless specially ordered by the Court; nor shall any paper be filed in Court, during the hours of the Court's being open; and every rule or order made, and every filing of any paper, contrary to this rule, shall be void.

52. If the plaintiff should not file his declaration before the first day of the second term after the return of the writ, he shall not be permitted to file it afterwards, without obtaining leave to do so; and he shall give four days notice to the adverse party of the time and place, when and where he intends to move for such leave.

53. Counsel at the bar, addressing themselves to the jury, in the trial of causes, shall stand at the lower end, or opposite side of the table, and not on that next to the Jury.

54. No defendant, in the Court of Sessions, shall be at liberty to submit any affidavit to the Court, which go to deny matters of fact, after a verdict against him; but shall confine himself to matters in extenuation or mitigation only; and these affidavits shall be filed so as to allow the Attorney-General or Solicitor, a reasonable time to answer them, or they shall not be heard.

55. On all rules to shew cause, the party called on shall begin and end his cause, and on all special matters, either springing out of a cause at issue, or otherwise, the actor or party submitting a point to the Court, shall in like manner begin and close; and so shall a defendant, who admits the plaintiff's case, and takes upon himself the burden of the proof, have the like privilege.

56. No attorney of this Court, shall ever attempt to argue or explain a case, after having been fully heard, and the opinion of the Court has been pronounced, on pain of being considered in contempt.

57. Every motion made, for any rule or order, shall be submitted to the Court in writing by the counsel, who makes it; and if granted by the Court, shall be delivered to the Clerk.

58. The Clerk of each Court shall keep a book, in which shall be entered the names of all persons who have been summoned as jurors, or bound in recognizances, and have made default; and shall note opposite to the name of the defaulter, whether he be fined or excused; and if fined, the amount of the fine; or by whom and when excused; which book shall be exhibited to the Court, at every sitting, and a copy of the entries therein transmitted to one of the Treasurers.

59. Surveys of lands in any quantity, of two hundred acres or less, shall be laid down by a scale of ten chains to the inch; all over that quantity by a scale of twenty chains to an inch.

60. Commissions for examining witnesses, when executed, may be returned by post: Provided, they be sealed up, directed to the Clerk of the Court from which they issue; deposited in the post-office by one of the Commissioners, and the postage paid.

61. In all cases wherein no particular rules are herein before set down, the practice of the Court of Common Pleas, at Westminster, shall be pursued, so far as the same be not repugnant or contrary to the above rules, or the laws of this State.

62. All rules and orders heretofore made for regulating the practice of this Court, shall be, and they are hereby wholly repealed.

J. F. GRIMKE,
THOMAS WATIES,
E. H. BAY,
WILLIAM JOHNSON, Jun.
E. RAMSAY,
LEWIS TREZEVANT.

Additional Rules of the Courts of Sessions & Common Pleas.

28TH OF AUGUST 1802; SINCE SUPERSEDED.

63. No motion brought up by defendant from the Court of Sessions, in any district, for a new trial, or in arrest of judgment, shall be heard by the Constitutional Court, unless the defendant be present; and if he be not present, the motion shall be dismissed without argument, unless his absence be occasioned by imprisonment or sickness. Constitutional Court.

64. It having been decided by the Constitutional Court at Columbia, that all motions to be brought before that Court, from any district on the eastern circuit, shall be heard in Charleston; no such motion shall hereafter be heard any where else—all motions to be brought from any other district, shall be heard at Columbia only.

65. Every brief served upon the Judges, shall be written upon a sheet of paper, of the size of propatria paper; and shall be endorsed with the names of the plaintiff and defendant, and of their attornies, with the district, term and year, when, and the name of the Judge before whom the cause was tried, with the nature of the motion, as for example:

Lancaster, April 1802.

A. B., Plaintiff. } E. F., Plaintiff's Attorney. }
vs. } Motion for a new Trial.
C. D., Defendant. } G. H., Defendant's Attorney. }

Tried before Judge

66. Whenever any motion may be made in arrest of judgment, or for a new trial, and the judgment may have been entered up as the party's security till the motion shall be decided; if either party should die before such decision shall take place, such judgment so entered up shall be set aside, so that the parties may be placed precisely in the same situation as they would have been, if the 50th Rule had never been made.

67. If any attorney shall, in any case, bring up a motion to the Constitutional Court, on grounds which shall appear to the Judges to be frivolous, or intended for delay, he shall be amerced at the discretion of the Court.

68. All cases in which new trials may be granted, in Charleston district, shall be placed at the end of the old, and before the new causes, on the issue docket; and the Clerk shall distinguish these cases from the others. Docket.

69. The Clerk shall always prepare a docket of the traverses, at each Court of Sessions, which shall be called, in due order, and the cases shall be disposed of as they are called.

70. Cases on the writ of inquiry, and summary process dockets, that shall have been called over at four Courts, without being tried, shall be struck off the docket, and be disposed of as is prescribed by the 22d Rule with respect to issues.

71. After the Court is opened, and until it adjourns each day, the Judges' dockets shall not be subject to the inspection of the Bar, or their clients.

72. The Court will proceed to call over the docket of writs of inquiry, each day, previous to calling the docket of issues, until they shall have called over fifty causes, or consumed one hour. The writ of inquiry docket shall be called but once, and called regularly. And when the docket of writs of inquiry shall be disposed of, the Court will proceed to call the docket of processes in the same manner.

73. If the business of the Sessions should not occupy the Court, till the usual hour of adjournment, the business of the Common Pleas shall always be immediately commenced.

74. No Survey, made under a Rule of Court, shall be received in evidence, unless it appears that at least fifteen days notice of the time and place of commencing such survey was given to the opposite party, by the one who offers it in evidence. Surveys.

75. Every surveyor shall represent in his plat, as nearly as he can, the different inclosures of the parties, and the extent or boundaries, within which each party may have exercised acts of ownership.

76. After a cause has gone to a jury, and any evidence been heard in it, neither party shall be allowed to make any objection to a rule of survey, made in the case, or the manner in which it may have been obtained, or the survey executed.

Juries and jurors & venires.

77. The Sheriff, or his Deputy, shall serve a written summons on each juror, expressing the day, hour, and Court, at which he is to appear, and the penalty for default; and also, whether he is to serve as a grand juror, or petit and common pleas juror, and if he neglect to comply with this rule, or any part of the 16th section of the old jury law, passed 20th August 1731, he shall be amerced according to the 17th and 25th sections of the said jury law.

77. Within ten days after the adjournment of each Court, the Clerk thereof shall issue to the Sheriff, a writ in nature of a scire facias upon a recognizance, commanding him to summon each and every juror, noted for default at that Court, to shew cause by affidavit, at ten o'clock on the first day of the next term, why they should not be fined according to law, for failing to attend and serve as grand or common pleas and petit jurors, as the case may be. And the Sheriff of each district, upon receipt of such writ, shall proceed to serve on each juror, mentioned in the said writ, a notice in writing to appear accordingly, which notice shall be either served personally, or left at his usual place of residence. And on the day prescribed by law, for the return of writs, the Sheriff shall regularly make return of the said writ, and at the meeting of the Court, the Clerk shall deliver all these writs to the Attorney-General, or Solicitor, who shall, on the second day of the term, move the Court for executions on the same.

79. The probates on all writs of venire, shall be written at length, in the manner prescribed by the 37th Rule.

80. After drawing every jury, the Clerk shall fold up the names of the jurors drawn, in paper, and indorse thereon when they were drawn, and for what term.

Constables.

81. In each district, at least eighteen constables shall be appointed, and at least that number shall be always kept up. Nine of them in rotation, shall be summoned in writing by the Sheriff, to attend each Court. Those who do not appear, according to their summons, shall be proceeded against by the Clerk, Sheriff, and Attorney-General, or Solicitor, in the manner prescribed against jurors who make default, unless the Court think fit to proceed more summarily against them.

82. Every Clerk shall keep a separate and accurate list of all the Constables appointed placing their names in one column, the dates of their qualifications in another, and the dates of their deaths or discharge in a third.

83. Every Sheriff shall always keep at least nine staves in good order, for the Constables, on pain of being amerced.

Commissions.

84. Upon every commission, returned by the post, one of the Commissioners who examined the witness, shall endorse and sign a certificate, that the same was lodged by himself in the Post-office; or publication shall not be ordered.

Sheriff sales.

85. All Sheriff's sales in Georgetown, shall be made at the market.

Exemplifications.

86. It shall not be necessary, hereafter, that the Clerk shall swear to any exemplification certified from his office.

Rules.

87. Every Clerk and Sheriff, who cannot produce all the Rules of Court, when required, shall be fined ten dollars for each default.

Filing papers.

88. No affidavit, or other paper, shall be offered to the Court, unless the original, if it be on affidavit, or a copy, if it be any other paper, has been previously filed.

89. No declaration shall be filed, unless written crosswise upon a whole sheet of paper, of the size of propatria paper, and folded and indorsed according to established custom; nor shall any plea, demurrer, or other pleading, be filed, unless written upon the declaration, or upon at least a half sheet of paper of same size.

Motions at Chambers.

90. At Chambers, no motion for a Rule to shew cause, why any judgment or execution, should not be set aside for irregularity, or other cause; or why the proceedings upon any judgment or execution, should not be staid, shall ever be heard, unless the party intending to move for it, shall have previously given to the adverse party reasonable notice thereof in writing, and shall also have served upon him copies of every affidavit, and office certificate, intended to be submitted to the judge, so as to allow him sufficient time to answer the same by counter affidavits, and certificates, if necessary; and the party about to make the motion, shall prove by a sufficient affidavit, before he is heard, that he has complied with every particular required by this rule.

91. No motion of the nature of those mentioned in the last rule, shall ever be heard at Chambers, unless it shall appear by a sufficient affidavit, that the ground of such motion was unknown, or that it was never in the party's power to have made such motion in open Court, during any previous Court.

Admissions.

92. In the absence of any party, or his attorney, no admission shall be received, in any case whatever, by the Court, unless such admission be produced in writing, and filed, or proved, according to the rules of evidence.

Fines and forfeitures.

93. The Clerk shall enter into the book, which he is ordered to keep by the 53th rule, the amount of fines laid, or incurred by law, by any other persons than those referred to in said rule, with the names of such persons as are fined, or who incur them, in a column, shewing when the fine was paid, or why it was not.

94. Whenever any person shall apply for the benefit of the insolvent debtors' act, or of the prison bounds' acts, if he should fail to make his motion on the day upon which his creditors are required by his advertisement to shew cause, he shall in addition to the notice published in the gazette, cause three days notice to be given to the persons, at whose suit he may be in custody, or their attornies, of the day wherein he intends to move that his petition be taken into consideration. The 17th Rule is hereby rescinded. Insolvent Debtors.

J. F. GRIMKE,
THOMAS WATIES,
ELIHU HALL BAY.
WILLIAM JOHNSON, Jr.
LEWIS TREZEVANT,
Charleston, August 28th 1802: JOSEPH BREVARD.

95. No person who is not a member of the Bar, shall be allowed to sit at the table or desk designed for the use of the Bar, in any Court-house in the State; nor shall any member of the Bar be allowed to take his seat there, unless he be first robed, nor to continue seated, unless he also continue in his robe. And it shall be the duty of the Sheriffs to attend to the execution of this Rule.

JOHN F. GRIMKE,
THOMAS WATIES,
LEWIS TREZEVANT,
May 1804: JOSEPH BREVARD.

96. *It is ordered,* That the 40th Rule of this Court, which requires a four day rule to be served upon the party or his attorney, against whom the award or umpirage shall be made, shall be *altered,* and that a rule of one day shall hereafter be sufficient, unless good and sufficient cause be shewn to the contrary.

JOHN F. GRIMKE,
THOMAS WATIES,
ELIHU HALL BAY.
J. BREVARD,
January 9th 1808. S. WILDS.

97. Whereas, it is deemed expedient for the furtherance of the business of the Court of Common Pleas, to rescind the 20th Rule of Court, by which the call of the dockets is limited to eighty causes in any one day. *It is therefore ordered,* that the said Rule be rescinded.

THOMAS WATIES,
ELIHU HALL BAY.
J. BREVARD,
S. WILDS,
January 12th 1810. WM. SMITH.

RULES

OF THE

Court of Common Pleas & General Sessions,

MADE MAY 7, 1814; SINCE SUPERSEDED.

Rules to plead.

1. Every rule to plead shall be posted on one of the front doors of the Court-house.

Orders for judgment.

2. On affidavit made of the posting of the Rule to plead, in manner aforesaid, if no plea be filed within the Rule, the Clerk shall enter an order for judgment on the record, and in the Book of Rules; and the plaintiff shall be at liberty to enter up judgment by default; Provided, that if the defendant or his attorney, shall apply to the Court, on or before the second day of the term next after such order is given to vacate the said judgment, the same shall be vacated on payment of the plaintiff's costs in obtaining such order; the defendant at the same time pleading an issuable plea, and going to trial *instanter*, (if the plaintiff, or his attorney, think proper so to do) and submitting to such other terms, as the Court, upon the merits of the application shall see fit to impose.

Pleadings.

3. Replications, and all subsequent pleadings, shall be filed within ten days after posting of the Rule to file such plea; in default whereof, the plaintiff's attorney shall be at liberty to take his order for judgment, or the defendant's attorney his judgment on *non pros*, which may be set aside on motion, at the time, and on the terms and conditions expressed in the second Rule for setting aside orders for judgment.

4. A copy of every deed, bond, open account, or other writing, declared on, shall be filed at the Clerk's office, at the time of filing the declaration; and the defendant, or his attorney, shall have oyer of the original, if he thinks proper to demand it, before he shall be required to file his plea; but this demand must be made before the rule to plead expires.

5. If any frivolous or deceitful plea shall be filed, the adverse party shall not be obliged to demur to the same; but such plea shall on motion, be rejected by the Court, and such judgment, or order, shall be awarded thereupon as shall be agreeable to justice.

6. No plea of *plene administravit*, shall be admitted in any action, against executors or administrators, unless the defendant pleading such plea, do file, with the same in the Clerk's office, a full and particular account of his administration, upon oath, with an office copy of the inventory and appraisement of the estate; to the end that it may appear to the Court, that the personal assets of the testator, or intestate, are really administered to the extent pleaded by defendant.

7. Every rule requiring the adverse party to proceed in his pleadings, shall be posted in the manner prescribed by the first rule.

Attornies, &c., not to be bail.

8. No attorney shall be suffered to be bail for any person whomsoever, on pain of being struck off the roll; and the Sheriff is hereby directed not to take any such bail, or the bail of any officer of the Court, on pain of being severely amerced.

Judgments.

9. The Clerks of the respective Courts shall keep a book, or docket, in which, at the end of every Court, they shall, without fee or reward, enter the names of the parties to every judgment entered, with the number of the bill, or entry, of such judgment; and shall reserve a blank column, or columns, in which shall be entered the execution which shall issue on every such judgment, together with the nature of such execution, and the time when issued; and also when such judgment is satisfied.

10. If any judgment shall not be entered in the same term, or Court, in which the same shall be obtained, the parties shall be at liberty to enter any such judgment on or before the last day of the Court or term, next ensuing, without paying any other fee for the same, than if such judgment had been entered in the same Court or term, in which the same was obtained; and no judgment shall be entered up after such second term, without giving a term's notice to the adverse party, or his attorney, of his intention to enter up the same.

11. No judgments obtained at any Circuit Court, shall be entered up previously to the day of the Court's rising.

12. All writs of execution shall be returned, regularly, into the office of the Clerk of the Court, from whence they issue, to be there filed and kept; and no Clerk shall affix the seal of the Court to any renewed execution, unless the one previously issued, be first delivered to him to be kept and filed as aforesaid; or unless authorised by a judge's order, granted on proof of the loss of the previous execution. Executions.

13. The habit of the gentlemen of the bar shall be black gowns and coats; and no gentleman of the bar shall be heard if otherways habited; and no gentleman of the bar shall be heard if otherways habited; nor shall any member of the bar be allowed to take his seat there, unless he be first robed, nor to continue seated, unless he also continue in his robe; and it shall be the duty of the Sheriffs to attend to the execution of this. Rule. Dress.

[*See Rules, January* 1836.]

14. The Clerks, and Sheriffs, shall also wear black coats; and the Sheriffs a military hat and sword.

15. Whenever a renunciation of inheritance, or dower, shall be taken under a commission, one at least of the Commissioners shall make oath before some magistrate, that such commission was duly executed; and all such renunciations and commissions shall be duly recorded. Renunciations.

16. Whenever any person shall apply for the benefit of the insolvent debtors' acts, or of the prison bounds' act, if he should fail to make his motion on the day upon which his creditors are required by his advertisement to shew cause, he shall in addition to the notice published in the gazette, cause three days notice to be given to the persons, at whose suit he may be in custody, or their attornies, of the day wherein he intends to move that his petition be taken into consideration. Insolvent Debtors.

17. All issues shall be entered on the docket before the Court meets, on the first day of the term. Docket.

18. All issues entered on the docket shall be called over, and tried in their order as docketted.

19. That all cases for new trials shall be placed at the head of the docket.

20. That all causes continued by consent, be placed at the foot of the docket.

21. If any issue writ of inquiry, or summary process docketted, shall be called at four Courts, and not tried, the plaintiff shall be called, and if he does not immediately go to trial, he shall be non-suited; unless it shall appear that it had been continued at defendant's motion, or other satisfactory cause shall be shewn to the Court, on oath, to prove it was not postponed from the plaintiff's neglect; or unless the defendant should, at such fourth calling, obtain a further continuance. Nothing in this rule shall be construed to prejudice defendant's right of calling for a non-suit any previous Court.

22. No Clerk shall enter a cause upon the docket until the pleadings are fully made up.

23. No cause shall be entered upon the docket, except by the Clerk, or his Deputy.

24. Causes marked on the docket "plea withdrawn," or "writ of inquiry," shall not be placed on the docket of the next term, without special permission of the Court.

25. Upon calling the docket, no motion for a continuance shall be granted on the ground of absence of a witness, without an oath, to the following effect, to-wit: That the testimony of the witness will be material to support the action, (or defence) of the party moving, that his motion is not intended for the purpose of delay; but solely, because he cannot with safety to his cause go to trial without such testimony; that he has made use of due diligence to procure the witness, or of such other circumstances, as will satisfy the Court, that the motion is not intended merely for delay. And in all cases where a writ of subpœna has been issued, the original shall be produced, and proof of the service, or of the reason, why not served, indorsed thereon; but if lost, the same proof shall be offered, with the additional proof of the loss of the original subpœna.

26. When the issue is made up, the parties shall be bound to come to trial, at the ensuing term, without a notice of trial.

27. The Clerk shall regularly preserve every docket, as a record of the Court; and on each docket that he shall make out, he shall not only number the causes thereon, but shall mention the number of terms, that they have been at issue.

28. The Clerk shall always prepare a docket of the traverses, at each Court of Sessions, which shall be called in due order, and the cases shall be disposed of as they are called.

29. After the Court is opened, and until it adjourns each day, the Judge's dockets shall not be subject to the inspection of the bar, or their clients.

30. The Court will proceed to call over the docket of writs of inquiry, or process, each day previous to calling the docket of issues, until they have consumed one hour, or at any other time, when not occupied by other business.

31. If the business of the Sessions should not occupy the Court, till the usual hour of adjournment, the business of the Common Pleas shall always be immediately commenced.

Writs of Inquiry.

32. All causes, on which writs of inquiry are to be executed, shall be entered on a docket to be kept in the Clerk's office, for that purpose, on or before the meeting of the Court, on the first day of the term; and no writ of inquiry shall be executed in any case not docketted.

33. If any rule to plead, should expire during the term; and the defendant fail to plead, the plaintiff may take his order for judgment, docket his cause among the writs of inquiry, and execute his writ of inquiry during the same term, according to the act in such case made and provided.

34. Writs of inquiry shall be entitled to precedence, according to their order on the docket.

Summary Process.

35. All causes within the summary jurisdiction of this Court, shall be entered on a docket, to be opened in the Clerk's office, for that purpose, on or before the meeting of the Court, on the first day of the term; and no cause shall be heard, if not so docketted. If the plaintiffs do not enter such causes on the docket for trial, the defendants may, at any time, during the term, enter them for dismission.

36. If the plaintiff in an action, by summary process, shall desire to have the benefit of defendant's oath, he shall state in writing, the points to which he shall require his oath, and serve him with a copy thereof, with notice of such his intention, at least one day before the hearing of the cause; and defendant may either give his answer in writing, to be sworn to before the Clerk, or *ore tenus* in open Court; and if a defendant shall desire the benefit of the plaintiff's oath, he shall proceed to require it in the same manner; and in case either plaintiff or defendant shall be absent, from and without the limits of the State, and it shall appear to the Court, by application made on oath, that the testimony of such absentee is necessary to the justice of the case, the person who is desirous to obtain the same, may issue a commission for that purpose, and a term shall be allowed to the party applying.

37. In all actions within the summary jurisdiction of this Court, a copy of the deed, note, open account, or other writing, on which the action may be founded, shall be endorsed on, or annexed to both the copy process and original.

Juries.

38. To all writs of *venire*, issued for summoning jurors, the Sheriff, or his Deputy, shall make a return, on oath, written at length, before the Clerk of the Court, from which the venire issues, of the service of the summonses, or notices, served on the persons whom he is commanded to summon: and such return shall be made by the Sheriff or such of his Deputies, as shall respectively serve the same immediately on their return from serving them; the Sheriff in his return, shall make one class of those who were summoned personally; a second class of those for whom summonses were left at their houses: and a third of those who could not be found.

39. If any Juror, once impannelled, and sworn, shall refuse or neglect, to attend punctually, on the call of the pannel every morning, the Clerk shall note such default; and the defaulter shall be forthwith served with a rule, to shew cause, why he should not be fined for his default. If upon service of such rule, he shall fail to come immediately into Court, to make his excuse, or such excuse should appear to the Court insufficient, such Juror shall be fined according to law.

Awards.

40. Upon the return of an award, or umpirage, a one day rule shall be served upon the party, or his attorney, against whom the award or umpirage, shall be made, to shew cause why the award or umpirage, should not be confirmed; and if the award or umpirage should be confirmed by the Court, then judgment shall be thereon entered, and execution issued against the body, or goods of the party, in the same manner as if a judgment had been obtained on verdict.

Declarations not to be taken from the office.

41. No Clerk shall permit a declaration to be taken from his office, after it is filed, until issue be joined, or an order for judgment obtained. In the former case, the plaintiff only shall be entitled to possession of the pleadings; in the latter, the party in whose favor the order for judgment is entered; either party shall be at liberty at any time, to inspect the pleadings, and to take a copy thereof.

42. If the plaintiff should not file his declaration before the first day of the second term, after the return of the writ, he shall not be permitted to file it afterwards, without obtaining leave to do so; and he shall give four days notice to the adverse party, of the time and place, when and where, he intends to move for such leave, unless the motion is made in open Court, in which case one day's notice will be deemed sufficient.

Foreclosing mortgages.

43. In suits, on bonds or other papers, secured by mortgage of real estate, the plaintiff shall obtain judgment as in other cases; and if he wishes to have a special order for the sale of the property mortgaged, he shall at any time pending the suit, or after judgment, file a suggestion, stating the time when, the parties by and to whom, and the conditions upon which the same was made, and the description, buttings and boundings of the land, and such other particulars as may be necessary, to bring all the circumstances before the Court; and when this is done, he shall serve on the defendant, or his attorney,

a ten day rule, to shew cause why such mortgaged estate should not be ordered to be sold, and upon the return of that rule, he may move the Court for such order.

44. Orders for the sale of mortgaged property to effect a foreclosure in this Court, shall be to the following effect: That if the defendant shall not within ..... after this date, pay to the plaintiff the full amount of principal, interests and costs, due by him on that day, the Sheriff shall proceed to sell the premises on a credit of ..... months; the titles to be signed, but not delivered, until the money be paid according to the terms of sale; and if the amount of the purchase money be not paid, when due, the Sheriff shall re-sell, by virtue of the same levy, on account of the former purchaser, for cash.

45. All Sheriffs sales of lands, houses, and negroes, shall be held, and take place at the Court-houses of the several districts, respectively; and household furniture, plantation utensils, carts, wagons, stock of horses, cattle, and such other personal effects, shall be sold at the discretion of the Sheriffs, either at the respective plantations or places where seized; or at the nearest convenient public place thereto; which place shall always be mentioned in the Sheriff's advertisement. Sheriffs' sales.

46. Every attorney, who shall think proper to bring forward any motion against the decision of a Circuit Court, or question on a point of law, shall give notice thereof in writing, with the grounds on which he intends to rest his motion, to the opposite attorney and the presiding judge, before the rising of such Court. Motions at the Circuit Trial Courts.

47. Whenever any motion is to be brought before the Judges, at Columbia, or in Charleston, a brief, setting forth so much of the circumstances of the case, as may be necessary to bring fully before the Court, every point to be decided by them, shall be served by the party making the motion, upon each of the Judges at the opening of the Court, on the first day at Columbia, or three days before the meeting of the Court in Charleston, if the case is to be argued there; the brief shall also contain the grounds on which the party means to rest his motion: and if he means to offer any affidavits to the Court, the adverse party shall be served with copies of them, so as to allow a reasonable time for answering them, or such affidavits shall not be heard. If any party giving notice of his intention to make such a motion, shall fail to comply with this rule, or fail to docket his case before the meeting of the Judges, on the first day, his motion or rule shall be discharged, upon application by the adverse party. No ground of objection in any such case shall be taken by the counsel, which is not expressed, or necessarily implied in the brief and notice, or which was not made in the Court below.

48. On the first day of the sitting of the Court, either at Charleston or Columbia, the causes in which such notices have been given, shall be entered on the paper of causes; and no cause shall be heard unless so entered.

49. In every case, where notice of any such intended motion shall be given, the attorney who has given it, shall prosecute it to a decision, agreeably to his notice; or the adverse attorney shall be at liberty to proceed in like manner, as if no notice had been given. And in case any cause shall be adjourned from one Court to the other, the same shall be prosecuted in the Court to which it is adjourned, in like manner, at the next succeeding Court; otherwise, the adverse attorney shall be at liberty to proceed in like manner, as if no notice had been given: Provided, nevertheless, that in all cases in which good and sufficient cause shall be shown, the Court may grant further time for hearing such motion.

50. In all cases in which a party shall receive notice of a motion for a new trial, or in arrest of judgment, he shall have leave, notwithstanding, to enter up his judgment, and lodge his execution to bind property; but if the motion be sustained, the judgment and execution shall be wholly set aside.

51. When the Court is open and sitting, no rule or order shall be granted or made, which can be obtained in course at the Clerk's office, unless specially ordered by the Court; nor shall any paper be filed in Court, during the hours of the Court's being open; and every rule or order made, and every filing of any paper, contrary to this rule, shall be void.

52. No defendant, in the Court of Sessions, shall be at liberty to submit any affidavit to the Court, which goes to deny matters of fact, after a verdict against him; but shall confine himself to matters in extenuation or mitigation only; and these affidavits shall be filed so as to allow the Attorney-General or Solicitor, a reasonable time to answer them, or they shall not be heard.

53. On all rules to shew cause, the party called on shall begin and end his cause, and on all special matters, either springing out of a cause at issue, or otherwise, the actor or party submitting a point to the Court, shall in like manner begin and close; and so shall a defendant, who admits the plaintiff's case, and takes upon himself the burden of the proof, have the like privilege.

54. No attorney of this Court, shall ever attempt to argue or explain a case, after having been fully heard, and the opinion of the Court has been fully pronounced, on pain of being considered in contempt.

55. Every motion made, for any rule or order, shall be submitted to the Court in writing by the counsel, who makes it; and if granted by the Court, shall be delivered to the Clerk.

56. The Clerk of each Court shall keep a book, in which shall be entered the names of all persons who have been summoned as jurors, or bound in recognizances, and have made default; and shall note opposite to the name of the defaulter, whether he be fined or excused; and if fined, the amount of the fine; or by whom and when excused; and the Clerk shall enter into this book, the amount of fines laid or incurred by law, by any other persons than those referred to in this rule, with the names of such persons as are fined, or who incur them, in a column, showing when the fine was paid, or why it was not.

Surveys. 57. Surveys of lands in any quantity, of two hundred acres or less, shall be laid down by a scale of ten chains to the inch; all over that quantity by a scale of twenty chains to an inch.

58. No Survey, made under a Rule of Court, shall be received in evidence, unless it appears that at least fifteen days notice of the time and place of commencing such survey was given to the opposite party, by the one who offers it in evidence.

59. Every surveyor shall represent in his plat, as nearly as he can, the different inclosures of the parties, and the extent or boundaries, within which each party may have exercised acts of ownership.

60. After a cause has gone to a jury, and any evidence been heard in it, neither party shall be allowed to make any objection to a rule of survey, made in the case, or the manner in which it may have been obtained, or the survey executed.

Commissions. 61. Upon every commission, returned by the post, one of the Commissioners who examined the witness, shall endorse and sign a certificate, that the same was lodged by himself in the Post-office; or publication shall not be ordered.

62. Commissions for examining witnesses, when executed, may be returned by post: Provided, they be sealed up, directed to the Clerk of the Court from which they issue, deposited in the post-office by one of the Commissioners.

Constitutional Court. 63. No motion brought up by defendant from the Court of Sessions, in any district, for a new trial, or in arrest of judgment, shall be heard by the Constitutional Court, unless the defendant be present; and if he be not present, the motion shall be dismissed without argument, unless his absence be occasioned by imprisonment or sickness.

64. It having been decided by the Constitutional Court at Columbia, that all motions to be brought before that Court, from any district on the eastern circuit, shall be heard in Charleston; no such motion shall hereafter be heard any where else—all motions to be brought from any other district, shall be heard at Columbia only.

65. Every brief served upon the Judges, shall be written upon a sheet of paper, of the size of propatria paper; and shall be endorsed with the names of the plaintiff and defendant, and of their attornies, with the district, term and year, when, and the name of the Judge before whom the cause was tried, with the nature of the motion, as for example:

Lancaster, April 1802.

A. B., Plaintiff. } E. F., Plaintiff's Attorney.
vs. } Motion for a new Trial.
C. D., Defendant. } G. H., Defendant's Attorney.

Tried before Judge

Juries and jurors & venires. 66. The Sheriff, or his Deputy, shall serve a written summons on each juror, expressing the day, hour, and Court, at which he is to appear, and the penalty for default; and also, whether he is to serve as a grand juror, or petit and common pleas juror, and if he neglect to comply with this rule, or any part of the 16th section of the old jury law, passed 20th August 1731, he shall be amerced according to the 17th and 25th sections of the said jury law.

67. Within ten days after the adjournment of each Court, the Clerk thereof shall issue to the Sheriff, a writ in nature of a scire facias upon a recognizance, commanding him to summon each and every juror, noted for default at that Court, to shew cause by affidavit, at ten o'clock on the first day of the next term, why they should not be fined according to law, for failing to attend and serve as grand or common pleas and petit jurors, as the case may be. And the Sheriff of each district, upon receipt of such writ, shall proceed to serve on each juror, mentioned in the said writ, a notice in writing to appear accordingly, which notice shall be either served personally, or left at his usual place of residence. And on the day prescribed by law, for the return of writs, the Sheriff shall

regularly make return of the said writ, and at the meeting of the Court, the Clerk shall deliver all these writs to the Attorney-General, or Solicitor, who shall, on the second day of the term, move the Court for executions on the same.

63. After drawing every jury, the Clerk shall fold up the names of the jurors drawn, in paper, and indorse thereon when they were drawn, and for what term.

Constables.

69. In each district, at least eighteen constables shall be appointed, and at least that number shall be always kept up. Nine of them in rotation, shall be summoned in writing by the Sheriff, to attend each Court. Those who do not appear, according to their summons, shall be proceeded against by the Clerk, Sheriff, and Attorney-General, or Solicitor, in the manner prescribed against jurors who make default, unless the Court think fit to proceed more summarily against them.

70. Every Clerk shall keep a separate and accurate list of all the Constables appointed placing their names in one column, the dates of their qualifications in another, and the dates of their deaths or discharge in a third.

71. Every Sheriff shall always keep at least nine staves in good order, for the Constables, on pain of being amerced.

Sheriff sales.

72. All Sheriff's sales in Georgetown, shall be made at the market.

Exemplifications.

73. It shall not be necessary, hereafter, that the Clerk shall swear to any exemplification certified from his office.

Rules.

74. Every Clerk and Sheriff, who cannot produce all the Rules of Court, when required, shall be fined ten dollars for each default.

Filing papers.

75. No declaration shall be filed, unless written crosswise upon a whole sheet of paper, of the size of propatria paper, and folded and indorsed according to established custom; nor shall any plea, demurrer, or other pleading, be filed, unless written upon the declaration, or upon at least a half sheet of paper of same size.

Motions at Chambers.

76. At Chambers, no motion for a Rule to shew cause, why any judgment or execution, should not be set aside for irregularity, or other cause; or why the proceedings upon any judgment or execution, should not be staid, shall ever be heard, unless the party intending to move for it, shall have previously given to the adverse party reasonable notice thereof in writing, and shall also have served upon him copies of every affidavit, and office certificate, intended to be submitted to the judge, so as to allow him sufficient time to answer the same by counter affidavits, and certificates, if necessary; and the party about to make the motion, shall prove by a sufficient affidavit, before he is heard, that he has complied with every particular required by this rule.

77. No motion of the nature of those mentioned in the last rule, shall ever be heard at Chambers, unless it shall appear by a sufficient affidavit, that the ground of such motion was unknown, or that it was never in the party's power to have made such motion in open Court, during any previous Court.

Admissions.

78. In the absence of any party, or his attorney, no admission shall be received, in any case whatever, by the Court, unless such admission be produced in writing, and filed, or proved, according to the rules of evideuce.

79. A copy of the indictment, in cases of felony, shall be obtained by order of the Judge, before whom the cause was brought, before an action of malicious prosecution shall be commenced.

80. No person indicted shall be tried, unless personally present.

81. In all cases wherein no particular rules are herein before set down, the practice of the Court of Common Pleas, at Westminster, shall be pursued, so far as the same be not repugnant or contrary to the above rules, or the laws of this State.

82. All rules and orders heretofore made for regulating the practice of this Court, shall be, and they are hereby wholly repealed.

J. F. GRIMKE,
ELIHU HALL BAY,
J. BREVARD,
WM. SMITH,
ABRAHAM NOTT,
C. J. COLCOCK.

Charleston, May 7th 1814.

Additional Rules of the Courts of Sessions & Common Pleas.

FROM 1814 TO 1833; SINCE SUPERSEDED.

83. In all actions to try title, where the defendant shall set up a title to the land in question, or any part thereof, either by possession or otherwise, he shall be required to plead the same, and in his plea, shall set out the land so claimed by him, by metes and bounds, with the same precision as the plaintiff is required to do.

84. Whereas, doubts have arisen, whether the Judge who presided at the trial before, should be served with a brief or not: It is hereby ruled, in future, the attorney appealing, shall deliver his brief to the Judge who presided at the Court below, on the first day of the meeting and sitting of the Constitutional Court, next ensuing each trial below, and shall deliver the briefs for the other Judges at the time that the cause is called.

Concerning Briefs.

85. In every case brought before the Constitutional Court, where the motion is to arrest the judgment, or reverse a decision made on demurrer, it shall be the duty of the counsel submitting the motion, to bring up a copy of the proceeding, to set forth in the briefs served on the Judges, so much of the record, or pleadings, as may be necessary to a clear understanding of the point or question of law intended to be discussed; and also, to point out particularly, the defect or defects, meant to be insisted on by way of appeal.

Concerning counsel.

86. Not more than two counsel shall be heard on each side, in any case argued in the Constitutional Court, except in criminal cases affecting the life of a party.

87. That where an issue out of the Court of Equity is directed to be tried in the Court of Common Pleas, that the Clerk of this Court shall give it place on the docket, from the time that application shall be made, so to docket it, and not to prefer it to other causes, which shall have been previously inserted on said docket.

88. That where a tenant is sued for land, of which he is in possession, that the real owner or his agent, or attorney, may enter himself on the proceedings, as the defendant in the suit, and shall be entitled to make such defence, as if he had been the original defendant in the action.

Constitutional Court.—Thursday, May 15th, 1817.

89. In all actions, already commenced, or hereafter to be commenced, by Vendue Masters, under the Act of the 17th March 1785, against purchasers at their sales, or against Vendue Masters, under the Act of the 15th December 1815, who have failed to pay over the proceeds of salss, the plaintiff shall be at liberty to file his declaration immediately on the return of the writ, or as soon thereafter as he shall think proper; and the Clerk shall sign a rule for the defendant to plead within ten days, upon application to him for that purpose—a copy of which shall be served on the defendant, if he reside within the City of Charleston—if he reside without the said city, posting the same up at the door of the Court-house, shall be deemed sufficient service. And if the defendant shall not plead within the time aforesaid, the plaintiff shall be entitled to his judgment by default; and in all such cases the presiding Judge shall assign a day of trial, at as early a period as may be convenient, without regard to the order in which they stand on the docket.

90. That in every case, in which a new trial has been granted, during the present Court, or in which a new trial shall be granted, at any future Court, the costs shall abide the event of the suit, except where there is, or shall be a special direction given respecting the costs. [*January* 18, 1818.]

91. Not more than two counsel shall hereafter be heard on the same side, of any cause in the Court of Common Pleas or Sessions; nor shall any assistant counsel be heard on the part of any prosecution in the Court of Sessions: *Provided*, however, that in capital criminal cases, the Court may, in its discretion, allow assistant counsel on the part of the prosecution, on the application of the Attorney-General, or Solicitor, or additional counsel on the part of the prisoner, on his application. [*April* 18, 1818.]

In the Constitutional Court.— Charleston, January 12, 1820.

92. *Ordered*, That the Rule numbered 21. of the Rules of the Court of Sessions and Common Pleas, made July the first, one thousand eight hundred, be re-established, as follows:

"If any causes remain uncalled, for want of time, they shall stand first in order on the docket for the ensuing term: and the causes that have been called, shall stand next in order. The causes newly docketted shall be entered last."

Charleston, January Term, 1824.

93. In all cases hereafter to be tried in the Constitutional Court, it shall be the duty of the counsel, or attorney bringing up the same, to furnish the State Reporter with a copy of the brief delivered to the Court, before the case is heard.

94. At the sitting of the Circuit Courts in Charleston, hereafter, the writ of inquiry and summary process dockets shall be called only on the Saturday of each week, during the term, unless more time be thought necessary, in which case the presiding Judge may set apart, and assign such other day or days, as he may deem necessary.

95. In the other districts, these dockets shall be called and disposed of, on the first day of each term, if practicable, and shall not be again called, unless the presiding Judge shall think proper to assign a subsequent day for the cases undisposed of.

In the Court of Appeals, April Term, 1833.

96. The Court proceeded to read and adopt the following rules, viz:

First. The Clerk of the Court of Appeals, shall not hereafter docket any case, until a copy of the decree of the Chancellor, or the original report of the presiding Judge, shall be delivered to him; it shall be the duty of the Clerk to furnish copies of said decree or report to any party in the appeal, and charge the party, or parties, for the same, with the costs for copying.

Second. The Register in the Court of Equity, (who is the Clerk of the Appeal Court) shall not be required to produce any original papers, but the party desiring the same, shall obtain copies; the originals will not be allowed to be brought into Court.

RULES

OF

The Court of Appeals.

ADOPTED AT THE FIRST SESSION UNDER THE ACT OF 1835.

1. The party intending to appeal from a verdict, or any point of law, decided against him in a Court of Law, shall in proper person, or by his attorney, give notice in writing, of his motion, and of the grounds thereof, to the other party, or his attorney, and the Judge before whom the case was tried, on the day next after the decision of the cause.

2. The Judge shall, as soon after the receipt of the said notice, as may be convenient, make out a report of the facts and points of law involved in the case, with his opinion thereupon, and state therein, whether upon the facts he is, or is not satisfied with the verdict, and deliver the same to the appellant's attorney, or the Clerk of the Court of Appeals.

3. Where the report has been delivered to the appellant's attorney, he must deposit it with the Clerk of the Court of Appeals, before he will be allowed to docket his case.

4. The appellant, at the hearing of the cause in the Court of Appeals, shall furnish to each of the Judges, who may sit to hear it, a true copy of the report of the Judge who tried it, written or printed upon at least a full sheet of propatria paper.

5. The appellant, in a case at law, relying upon an exception to the record, must procure and bring up to the Court of Appeals an office copy.

6. In equity cases, the party intending to appeal from the decree of the Chancellor, shall, within fifteen days after notice of the filing of the decree, in proper person, or by his solicitor, give notice in writing, of his intended motion, and of the grounds thereof, to the other party, or his solicitor.

7. The appellant in equity shall obtain and file with the Clerk of the Court of Appeals, before he shall be allowed to docket his cause, a true copy of the decree, and of so much of the record as may be necessary to the correct understanding of his motion.

8. He shall make out, and furnish to each of the Judges, an intelligible statement of the facts and points of law involved, with his grounds of appeal, from the circuit decree.

9. A cause at law, or in equity, in which the party appeals, must be docketed at the first term of the Court of Appeals, after it may have been decided, provided in an equity cause, that the time allowed for an appeal, after notice of the filing of the decree, shall have expired; and if the appeal be not docketed, then the appeal will be considered abandoned.

10. A cause to be heard at any term of the Court of Appeals, must be docketed at least three days before the session of the Court.

11. Not more than two attorneys or solicitors, (except in capital criminal cases,) shall be heard on the same side of a case in the Court of Appeals.

12. In a case at law, or in equity, in which there may be written testimony, or papers necessary to a correct understanding and decision of it, it shall be the duty, and it is hereby required of the appellant's attorney, or solicitor, to procure and bring up copies of the same. The originals, unless for the purpose of inspection, will not be received by the Court.

13. After the present term, all appeals in law and equity from the country, shall, in Charleston, be placed on one docket, in the order in which they may be handed to the Clerk, and be heard the first days of each term; and those from Charleston, shall, in like manner, be docketed, and be heard as soon as the country causes shall be disposed of. In Columbia, all appeals in law and equity, shall be placed on one docket, in the order in which they may be handed to the Clerk.

14. No opinion, in a cause submitted, will be given, unless the attorney or solicitor submitting it, furnishes an argument in writing. When this Rule is not complied with, the appeal will be considered abandoned, and the cause struck from the docket.

15. Petitions for admission to the Bar, must be filed, on or before the Monday of the second week of each term; and the examination of the applicants, shall be by a Committee of the Bar, on such heads of law or equity, as the Court may direct.

16. The Clerks of Columbia and Charleston, will make out copies of their respective dockets of the Court, for each Judge.

17. All the Rules of Court now in force, whether at law or in equity, adopted by the Constitutional Court, the Court of Appeals in Equity, and the late Court of Appeals, not altered by these Rules, are considered of force in, and obligatory on, this Court.

DAVID JOHNSON,	RICHARD GANTT,
B. J. EARLE,	JOSIAH J. EVANS,
JOHN B. O'NEALL,	WILLIAM HARPER,
J. S. RICHARDSON,	A. P. BUTLER,
H. W. DESAUSSURE,	J, JOHNSTON.

Note.—It is the resolve of the Judges, that hereafter, on the Circuits, at each of the Courts, the Sheriffs will be required to wear a black coat, cocked hat, and sword; and to attend the Judge to, and from his lodgings The Clerks and the members of the Bar, will be required to wear in Courts, black coats. This is the enforcement of the Rules of Court, in this respect, and not new rules.

By the Court of Appeals,

THOMAS J. GANTT, *Clerk.*

January 1836.

RULES

OF THE

Courts of Sessions and Common Pleas,

AND OF THE

Court of Law Appeals of South-Carolina,

ADOPTED

DECEMBER TERM 1837, AND AFTERWARDS; NOW OF FORCE.

RULES TO PLEAD.[a]

1. Every rule to plead shall be posted on one of the front doors of the Court-house. (*Vide*, 1758 R. 6. 1771 R. 25. 1788, 1800 R. 1. 1814 R. 1.) Posting of Rules.

ORDERS FOR JUDGMENT.

2. If no plea be filed within the rule, the Clerk shall enter on the record, and on the Book of Rules,[b] an order for judgment, and the plaintiff shall be at liberty to enter up a judgment by default;[c] provided, that if the defendant, or his attorney, shall apply to the Court, on or before the second day of the term next after such order is given, to vacate the said judgment, the same shall be vacated, on payment of the plaintiff's costs, in obtaining such order; the defendant, at the same time, pleading an issuable plea,[d] and submitting to such terms as the Court, upon the merits of the application, shall see fit to impose.—(*Vide*, 1758 R. 7. 1800 R. 2. 1814 R. 2.) Order for Judgment. How vacated.

PLEADINGS.

3. Replications, and all subsequent pleadings, shall be filed within ten days after posting the rule, to file such plea; in default whereof, the plaintiff's attorney shall be at liberty to take his order for judgment, or the defendant's attorney his judgment on *non pros.*[e] which may be set aside, on motion, at the time, and on the conditions, expressed in the second rule, for setting aside orders for judgment. (*Vide*, 1758 R. 8. 1800 R. 3. 1814 R. 3.) Replications, &c.

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a. 1 Sell. Prac. 300. 1791, 7 stat. 263 § 6. . 1839, 11 stat. 71, 75, § 8 & 16.
b. 1839, 11 Stat. 71 § 8.
c. 1791, 7 Stat. 263 § 6. Dubose v. Adm'r of Dubose, Cheves, 29.
d. 1 Sell. Prac. 308.
e. 13 Chs. II. Sta. 2, c. 2. 2 Stat. 513. Bank vs. Torre, 2 Speer, 501. Murphy vs. Sumner, 1 Hill 216.

Copy & Oyer. 4. A copy of every deed, bond, or open account, or other writing, declared on, shall be filed at the Clerk's office at the time of filing the declaration; and the defendant, or his attorney, shall have oyer of the original, if he think proper to demand it, before he shall be required to file his plea; but this demand must be made before the rule to plead expires. [a] (*Vide*, 1758 R. 9. 1800 R. 4. 1814 R. 4.)

Frivolous plea. 5. If any frivolous or deceitful plea shall be filed, the adverse party shall not be obliged to demur to the same, but such plea shall, on motion, be rejected by the Court, and such judgment, or order, shall be awarded thereupon, as shall be agreeable to justice. [b] (*Vide*, 1758 R. 13. 1800 R. 5. 1814 R. 5.)

Plene administravit. 6. No plea of *plene administravit* shall be admitted in any action against executors, or administrators, unless the defendant, pleading such plea, do file, with the same, a full and particular account of his administration, upon oath, with an office copy of the inventory and appraisement of the estate; to the end, that it may appear to the Court, that the assets of the testator, or intestate, are really administered to the extent pleaded by the defendant: and in case the defendant be charged as an executor *de son tort*, he shall, in lieu of the office copies above required, file with his plea, on oath, a full account of all the assets which have come into his possession, and an account shewing the manner in which he has disposed of the same. [c] (*Vide*, 1758 R. 22. 1800 R. 6. 1814 R. 6.)

Posting of Rules. 7. Every rule requiring the adverse party to proceed in his pleading, shall be posted in the manner prescribed by the first rule. (*Vide*, 1800 R. 7. 1814 R. 7.)

ATTORNIES, &c., NOT TO BE BAIL.

No officer of Court to be taken as bail. 8. No attorney shall be bail for any person whomsoever, on pain of being struck off the roll; and the Sheriff is hereby directed not to take any such bail, or the bail of any officer of the Court, on pain of being severely amerced. [d] (*Vide*, 1758 R. 14. 1800 R. 8. 1814 R. 8.)

JUDGMENTS.

Abstract of Judgment. 9. The Clerk of every Court shall keep a book, or docket, in which, at the end of every Court, he shall, without fee, or reward, enter the names of the parties to every judgment entered, with the number of the bill or entry of such judgment, and he shall reserve a blank column, or columns, in which shall be entered the execution which shall issue on every such judgment, together with the nature of such execution, and the time when issued, and also when such judgment is satisfied. [e] (*Vide*, 1758 R. 17. 1800 R. 9, 1814 R. 9.)

Judgments, when to be entered up. 10. If any judgment shall not be entered in the same term, or Court, at which the same shall be obtained, the parties shall be at liberty to enter such judgment, on or before the last day of the Court, or term, next succeeding, without paying any other fee for the same, than if

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a. Cregier v. Smith, 1 Speer, 293, and cases there cited. Vidal v. Clark, 2 Rich. 359.
b. Stat. 9, Ann c. 20 § 11. 2 Stat. 434.
c. Johnson vs. Johnson, 1 Bail. 603. Ford v. Adm'r of Rouse, Rice's L. R. 219.
d. 1839, 11 Stat. 30 § 24.
e. 1839, 11 Stat. 72 § 8 cl. 5.

such judgment had been entered in the same Court, or term, in which the same was obtained; and no judgment shall be entered up after such second term, without giving a term's notice to the adverse party, or his attorney, of the intention to enter up the same.[a] (*Vide*, 1758 R. 18. 1800 R. 10. 1814 R. 10.)

11. No judgment obtained at any Court shall be entered up previous to the day of the Court's rising.[b] (*Vide*, 1800 R. 11. 1814 R. 11.) Id.

EXECUTIONS.

12. All writs of execution shall be returned regularly into the office of the Clerk of the Court from whence they issue, to be there filed and kept; and no Clerk shall affix the seal of the Court to any renewal execution, unless the one previously issued shall be first delivered to him, to be kept and filed as aforesaid, or unless authorized by a Judge's order, granted on proof of the loss of the previous execution.[c] (*Vide*, 1758 R. 20. 1800 R. 13. 1814 R. 12.) To be return'd and filed. Renewal Execution.

DRESS.

13. The habit of the gentlemen of the Bar shall be black coats; and no gentleman of the Bar shall be heard if otherwise habited: and it shall be the duty of the Sheriff to attend to the execution of this rule. (*Vide*, 1758 R. 21. 1800 R. 14. 1814 R. 13.) Dress of Att's.

14. The Clerk and Sheriff shall also wear black coats, and the Sheriff a military hat and sword.[d] (*Vide*, 1800 R. 15. 1814 R. 14. *See also note to Rules of* 1836.) Do. of Clerks & Sheriffs.

INSOLVENT DEBTORS.

15. Whenever any person shall apply for the benefit of the insolvent debtors act, or the prison bounds act, if he shall fail to make his motion on the day upon which his creditors are required by his advertisement to shew cause, he shall, in addition to the notice published in the gazette, cause three days notice to be given to the persons at whose suit he may be in custody, or their attorneys, of the day whereon he intends to move, that his petition be taken into consideration.[e] (*Vide*, 1770. 1800 R. 17. 1802 R. 94. 1814 R. 16.) Additional notice to creditors, when necessary.

RENUNCIATIONS.

16. Whenever a renunciation of inheritance, or dower, shall be taken under a commission, one at least of the Commissioners shall make oath before some magistrate that such commission was duly executed; and all such renunciations and commissions shall be duly recorded.[f] (*Vide*, 1758 R. 23. 1800 R. 16. 1814 R. 15.) When taken under a Commission.

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a. Dibble vs. Taylor, 2 Speer, 308.
b. Union Bank vs. Magrath, 2 Speer, 302.
c. 1839, 11 Stat. 36 § 56. Primrose vs. Becket, 3 McC. 418. Robertson vs. Shannon, 2 Strob. 1839, 11 Stat. 76 § 19.
d. 1839, 11 Stat. 30 § 22.
e. Bettis vs. Nixon, 1 Strob. 148. Mordecai vs. La Rissey, 1 Rich. 192.
f. 1839, 11 Stat. 77 § 23. Kottman vs. Ayer, 1 Strob. 553.

DOCKET. [a]

Issues when to be docketed.

17. All issues shall be entered on the docket, before the Court meets, on the first day of the term. (*Vide*, 1796. 1800 R. 18. 1814 R. 17.)

Order in which they shall be tried.

18. All issues entered on the docket shall be called over, and tried, in the order in which they are docketed. (*Vide*, 1772 R. 26. 1800 R. 19. 1814 R. 18.)

Plff. shall be non-suited for not proceeding to trial.

19. If any issue, writ of inquiry, or summary process, docketed, shall be called at four Courts, and not tried, the plaintiff shall be called, and if he does not immediately go to trial, he shall be non-suited; unless it appear that it had been continued at the defendant's motion, or other satisfactory cause shall be shown to the Court, on oath, to prove that it was not postponed by the plaintiff's neglect; or unless the defendant shall, on such fourth calling, obtain a further continuance. Nothing in this rule shall be construed to prejudice the defendant's right of calling for a non-suit at any previous Court.[b] (*Vide*, 1795, 1800 R. 22. 1802 R. 70. 1814 R. 21.)

Cases, when to be entered.

20. No Clerk shall enter a cause on the docket until the pleadings are made up.[c] (*Vide*, 1796. 1800 R. 23. 1814 R. 22.)

By whom docketed.

21. No cause shall be entered on the docket except by the Clerk or his deputy.[d] (*Vide*, 1800 R. 24. 1814 R. 23.)

Permission to docket when necessary.

22. Causes marked on the docket, "plea withdrawn," or "writ of inquiry," shall not be placed on the docket of the next term, without special permission of the Court. (*Vide*, 1800 R. 25. 1814 R. 24.)

Affidavit for continuance.

23. Upon calling the docket, no motion for a continuance shall be granted on the ground of absence of a witness, without an oath to the following effect, to-wit: That the testimony of the witness will be material to support the action, (or defence) of the party moving; that his motion is not intended for delay, but solely because he cannot go safely to trial without such testimony; and that he has made use of due diligence to procure the witness: or of such other circumstances as will satisfy the Court that his motion is not intended for delay merely. And in all cases where a writ of subpœna has been issued, the original shall be produced, and proof of service, or the reasons why not served, endorsed thereon; but if lost, the same proof shall be offered, with the additional proof of the loss of the original subpœna.[e] (*Vide*, 1800 R. 26. 1814 R. 25.)

Notice of trial unnecessary.

24. When the issue has been made up, the parties shall be bound to come to trial at the ensuing term, without notice of trial. (*Vide*, 1758 R. 16. 1800 R. 27. 1814 R. 26.)

Affidavit for continuance after first term.

25. After the first term, a party applying for a continuance, on account of the absence of a witness, shall set forth, in addition to the requisitions of the 23d rule, what he believes the absent witness will prove; and the Court may, as a condition of the continuance, order that he pay the cost.[f]

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a. Davidson vs. Middleton, 3 Rich. 349. 1839, 11 Stat. 72 § 8.
b. Farr vs. McDowall, 1 Bay 31. Munro vs. Laurens, 1 McMul. 442.
c. 1839, 11 Stat. 72 § 8.
d. Id. Id.
e. Price ads. Justrobe, Harp. 111. Lyles vs. Robinson, 1 Bail. 25. Sheppard vs. Lark, 2 Bail. 576. Bone vs. Hillen, 1 Mills, C. R. 197.
f. Farrand vs. Bouchell, Harp. 83. M. S. Young vs. Aiken, Col. Dec. 1846.

Duty of Clerk respecting dockets.

26. The Clerk shall regularly preserve every docket, as a record of the Court, and on each docket that he shall make out, he shall not only number the causes thereon, but shall mention the number of terms that they have been at issue; and also, in a separate column, shall copy from the preceding docket, the memorandum made by the Judge, of the manner in which the case was disposed of at the last Court. [a] (*Vide*, 1796. 1800 R. 28. 1814 R. 27.)

Sessions docket.

27. The Clerk shall, at each term, prepare a docket of the traverses, and other cases, in the Sessions, which shall be called in due order, and the cases disposed of as they are called. [b] (*Vide*, 1802 R. 69. 1814 R. 28.)

Judges' and Bar docket.

28. After the Court is opened, and until it adjourns, each day, the Judge's dockets shall not be subject to the inspection of the Bar, or their clients, but it shall be the duty of the Clerk to make a copy of the docket for the use of the Bar. [c] (*Vide*, 1802 R. 71. 1814 R. 29.)

Process and Inquiry dockets, when to be called.

29. The process docket shall be called on the first day of the term, and if not finished, at such other times as the Judge shall direct. The inquiry docket shall be called next to the process, then the docket of sessions cases, and then the issue docket; but in Charleston, the process docket shall be called on the Saturday of the first week of the term. [d] (*Vide*, 1795 R. 1. 1800 R. 34. 1802 R. 72. 1814 R. 30. 1824 R. 94 and 95.)

WRITS OF INQUIRY.

Inquiry dock't

30. All cases on which writs of inquiry are to be executed, shall be entered by the Clerk on a docket to be kept in the Clerk's office for that purpose, on or before the meeting of the Court, on the first day of the term; and no writ of inquiry shall be executed in any case not docketed. [e] (*Vide*, 1800 R. 29. 1814 R. 32.)

31. If any rule to plead shall expire during the term, and the defendant fail to plead, the plaintiff may take his order for judgment, docket his cause among the writs of inquiry, and execute his writ of inquiry during the term, according to the act in such case made and provided. (*Vide*, 1800 R. 30. 1814 R. 33.)

32. Writs of inquiry shall be entitled to precedence according to their order on the docket. (*Vide*, 1800 R. 32. 1814 R. 34.)

SUMMARY PROCESS. [f]

When to be docketed.

33. All causes within the summary process jurisdiction of this Court, shall be entered on a docket to opened in the Clerk's office for that purpose, on or before the meeting of the Court, on the first day of the term; and no cause shall be heard if not so docketed. If the plaintiffs do not enter such causes on the docket for trial, the defendants may at any time, during the term, enter them for dismission. (*Vide*, 1772 R. 27. 1796. 1800 R. 33. 1814 R. 35.)

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a. 1839, 11 Stat. 72 § 8.
b. Id.
c. Id.
d. Country Docket for Charleston, see Act 1817, 7 Stat. 316.
e. 1839, 11 Stat. 72 § 8.
f. 1768, 7 Stat. 200. 1839, 11 Stat. 72 § 8.

Oath of party.

34. If the plaintiff, in an action by summary process, shall desire to have the benefit of the defendant's oath, he shall state, in writing, the points to which he shall require his oath, and serve him with a copy thereof, with notice of such intention, at least one day before the hearing of the cause; and the defendant may either give his answer in writing, sworn to before the Clerk, or *ore tenus* in open Court. And if a defendant shall desire the benefit of the plaintiff's oath, he shall proceed to require it in the same manner. And in case either the plaintiff, or defendant, shall be absent from, and without the limits, of this State, and it shall appear to the Court, by application made on oath, that the testimony of such absentee is necessary to the justice of the case, the person desiring to obtain the same, may issue a commission for that purpose, and a term shall be allowed to the party applying.[a] (*Vide*, 1800 R. 35. 1814 R. 36.)

Copy of Note, &c., to be endorsed.

35. In all actions within the summary process jurisdiction of this Court, a copy of the deed, note, open account, or other writing, on which the action may be founded, shall be endorsed on, or annexed to both the copy process and original.[b] *Vide*, 1773 R. 30. 1800 R. 36. 1814 R. 37.)

JURIES, JURORS, AND VENIRES.[c]

Duty of Sheriff respecting writs of venire

36. To all writs of venire, issued for summoning jurors, the Sheriff, or his deputy, shall make a return, on oath, written at length, before the Clerk of the Court, from whence the venire issues, of the service of the summonses, or notices, served on the persons whom he is commanded to summon. The Sheriff, in his return, shall make one class of those who were summoned personally; a second class of those for whom summonses were left at their houses; and a third, of those who could not be found.[d] (*Vide*, 1785. 1800 R. 37. 1802 R. 79. 1814 R. 38.)

Duty in summoning jurors.

37. The Sheriff, or his deputy, shall serve a written summons on each juror, expressing the day, hour and Court, at which he is to appear, and the penalty for default; and also, whether he is to serve as a grand juror, or petit and common pleas juror: and if he neglect to comply with this rule, or any part of the 16th section of the old jury

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a. Dillon vs. McCue, 2 Bay, 230: Hencken vs. Gramann, 2 Rich. 365: Hill vs. Denny, 1 Strob. 338: Walker vs. Mathaney, Harp. 187: Wallace vs. Norvell, 1 Bail. 125: Bartoline vs. Heartle, 2 Bail. 196: Clark vs. Meek, Id. 391: Fulmore vs. Cockfield, Id. 446: Toomer vs. Righton, Riley's L. C. 263: Holly vs. Thurston, Rice 232: Stead vs. Brannon, Rice 298.

b. Bailey vs. Wilson, 1 Bail. 15: Hagood vs. Mitchell, Id. 124: Wilson vs. Pyles, 1 Strob. 353, and cases there cited.

c. 1731, 3 Stat. 274: 1791, 7 Stat. 273 § 6: 1799, 7 Stat. 291: 1763, 7 Stat. 203 § 15; 1813, (relating to Juries in Charleston) 6 Stat. 93 § 1: 1839, 11 Stat. 73 § 10, 11, 12: 1839, 11 Stat. 33 § 45. As to Talesmen, see State vs. Burket, 2 Mills, C. R. 155: State vs. Williams, 2 Hill, 384. As to examination of Jurors on *voir dire*, State vs. Baldwin, 3 Brev. 309: State vs. Sims, 2 Bail. 33. As to challenge in trial of felony, State vs. Barrontine, 2 N. & McC. 553: State vs. Sims, 2 Bail: 32. As to polling, State vs. Harden, 1 Bail. 3: Martin vs. Maverick, 1 McC. 24: State vs. Allen, 1 McC. 525. As to challenge in civil cases, and misdemeanors, see 1841, 11 Stat. 154, State vs. Kleinback, 2 Speer, 418: Cregier vs. Bunting, in Error, Charleston, January 1813, 2 Strob.

d. 1839, 11 Stat. 33 § 45.

law, passed the 20th August 1731,[a] he shall be amerced according to the 17th and 25th sections of the said jury law. (*Vide*, 1802 R. 77. 1814 R. 66.)

Indorsement on Jurors drawn.

38. After drawing every jury, the Clerk shall fold up the names of the jurors drawn, in paper, and indorse thereon, when they were drawn, and for what term.[b] (*Vide*, 1802 R. 80. 1814 R. 68.)

Negligent Jurors.

39. If any juror, once impannelled, and sworn, shall refuse or neglect to attend punctually on the call of the pannel, every morning, the Clerk shall note such default; and the defaulter shall be forthwith served with a rule, to shew cause why he should not be fined for his default. If upon the service of the rule, he shall fail to come immediately into Court, to make his excuse, or such excuse should appear to the Court insufficient, such juror shall be fined according to law.[c] (*Vide*, 1794. 1800 R. 39. 1802 R. 70. 1814 R. 39.)

Sci. Fa. against defaulting Jurors.

40. Within ten days after the adjournment of the Court, the Clerk thereof shall issue to the Sheriff,[d] a writ in the nature of a scire facias upon a recognizance, commanding him to summon each and every juror, noted for default at that Court, to shew cause, by affidavit, at ten o'clock on the first day of the next term, why they should not be fined according to law, for failing to attend and serve as grand or common pleas and petit jurors, as the case may be. And the Sheriff of each district,[e] upon the receipt of such writ, shall proceed to serve each juror mentioned in the said writ, with a notice in writing, to appear accordingly; which notice shall be either served personally, or left at his usual place of residence. And on the day prescribed by law for the return of such writs, the Sheriff shall regularly make return thereof, and at the meeting of the Court, the Clerk shall deliver all these writs to the Attorney-General, or Solicitor, who shall move the Court for executions on the same, on the second day of the term, or *before* the Court adjourns.[f] (*Vide*, 1802 R. 78. 1814 R. 67.)

AWARDS.

Mode of confirming an award.

41. Upon the return of an award, or umpirage, a one day rule shall be served upon the party, or his attorney, against whom the award, or umpirage, shall have been made, to show cause why the same should not be confirmed; and if the award or umpirage should be confirmed, then judgment shall be entered thereon, and execution issued against the body, or goods, of the party, in the same manner as if a judgment had been obtained on verdict. (*Vide*, 1787, 1800 R. 40. 1808 R. 96. 1814 R. 40.)

FORECLOSING MORTGAGES.[g]

42. In suits on bonds, or other papers, secured by mortgage of real estate, the plaintiff shall obtain a judgment as in other cases: and if he

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a. 3 Stat. 278.
b. 1839, 11 Stat. 74 § 12.
c. 6 Stat. 291.
d. 1839, 11 Stat. 74 § 11.
e. 1839, 11 Stat. 34 § 45. Concerning exemptions from Jury duty; State vs. Ingraham, Cheves 78.
f. See additional rule, No. 93.
g. 1791, 5 Stat. 169; Durand vs. Isacks, 4 McC. 54; Williamson vs. Farrar, Carolina Law J., 184, 195; same case, 2 Bail. 211.

Suggestion for sale of mortg'd premises.

wishes to have a special order for the sale of the property mortgaged, he shall at any time pending the suit, or after judgment, file a suggestion, stating the time when, the parties by, and to whom, and the conditions upon which the same was made, and the description, buttings, and boundings of the land, and such other particulars, as shall be necessary, to bring all the circumstances before the Court; and when this is done, he shall serve on the defendant, a ten day rule, to shew cause why such mortgaged estate should not be ordered to be sold, and upon the return of that rule, he may move the Court for such order. (*Vide*, 1800 R. 42. 1814 R. 43.)

Form of order of sale.

43. Orders for the sale of mortgaged property to effect a foreclosure in this Court, shall be to the following effect, viz: That if the defendant shall not within ..... pay to the plaintiff the full amount of principal, interest, and costs, due by him, on that day, the Sheriff shall proceed to sell the premises on a credit of ..... months; the titles to be signed, but not delivered, until the money be paid according to the terms of the sale; and if the amount of the purchase money be not paid, when due, the Sheriff shall re-sell by virtue of the same levy, on account of the former purchaser, for cash. (*Vide*, 1800 R. 43. 1814 R. 44.)

SHERIFF'S SALES.

Where to be held.

44. All Sheriffs' sales of lands, houses, and negroes, shall be made at the Court-houses of the several districts; and household furniture, plantation utensils, carts, wagons, horses, cattle, and other personal effects, shall be sold, at the discretion of the Sheriff, either at the respective plantations, or places where seized; or at the nearest convenient public place thereto, which place shall always be mentioned in the Sheriffs' advertisement. But all Sheriffs' sales in Georgetown shall be made at the market.[a] (*Vide*, 1791, 1792 p. 9 and 10. 1800 R. 44. 1802 R. 85. 1814 R. 45 and 72.]

SURVEYS.[b]

Scale.

45. Surveys of lands in any quantity, of two hundred acres, or less, shall be laid down by a scale of ten chains to the inch; all over that quantity by a scale of twenty chains to an inch. (*Vide*, 1800 R. 59. 1814 R. 57.)

Notice of survey.

46. No survey, made under a rule of Court, shall be received in evidence, unless it appear, that, at least, fifteen days notice of the time and place of commencing such survey, was given to the opposite party, by the one who offers it in evidence. (*Vide*, 1802 R. 74. 1814 R. 58.)

Directions for Surveyors.

47. Every surveyor shall represent in his plat, as nearly as he can, the different enclosures of the parties, and the extent, or boundaries, within which each party may have exercised acts of ownership. (*Vide*, 1802 R. 75. 1814 R. 59.)

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a. 1791, 7 Stat. 269, 276: 1839, 11 Stat. 37 § 58: See these Statutes, for the days of sale, and mode of advertising: also, Turner vs. McCrea, 1 N. & McC. 11.

b. Underwood vs. Evans, 2 Bay, 437: Frean ads. Cruikshanks, 3 McC. 84: Thomas & Ashby vs. Jeter & Abney, 1 Hill, 380: Huggins vs. Brewer, 2 Bail. 25: Screven vs. Heyward, Cheves 119.

48. After a cause has gone to a jury, and any evidence has been heard in it, neither party shall be allowed to make any objection to the rule of survey, or the manner in which it may have have been obtained, or the survey executed. [a] (*Vide*, 1802 R. 76. 1814 R. 60.)

Objections to Survey, when not permitted.

COMMISSIONS. [b]

49. Upon every commission, returned by the post, one of the Commissioners who examined the witnesses, shall indorse and sign a certificate, that the same was lodged by him in the post-office. (*Vide*, 1802 R. 84. 1814 R. 61.)

50. Commissions for examining witnesses, may be returned by post when executed, provided they be sealed up, directed to the Clerk of the Court from whence they issued, and deposited in the post-office by one of the Commissioners. (*Vide*, 1800 R. 60. 1814 R. 62.)

EXEMPLIFICATIONS.

51. It shall not be necessary, that the Clerk should swear to any exemplifications certified from his office. [c] (*Vide*, 1802 R. 86. 1814 R. 73.)

Unnecessary to be sworn to.

RULES.

52. Every Clerk and Sheriff, who cannot produce all the rules of Court, when required, shall be fined ten dollars for such default. (*Vide*, 1802 R. 87. 1814 R. 74.)

Cl'k & Sh'ff to produce them.

MOTIONS AT CHAMBERS. [d]

53. At Chambers, no motion for a rule to show cause, why any judgment or execution, should not be set aside for irregularity, or other cause, or why the proceedings upon any judgment, or execution, should not be staid, shall ever be heard, unless the party intending to move for it, shall have previously given to the adverse party reasonable notice thereof, in writing, and shall also have served upon him, copies of every affidavit, and office certificate, intended to be submitted to the judge, so as to allow him sufficient time to answer the same by counter affidavits, and certificates, if necessary: and the party about to make the motion, shall prove, by sufficient affidavit, before he is heard, that he has complied with every particular required by this rule. (*Vide*, 1802 R. 90. 1814 R. 76.)

Notice, &c. to to be served on the adverse party.

54. No motion of the nature of those mentioned in the last rule, shall ever be heard at Chambers, unless it shall appear by a sufficient affidavit, that the ground of such motion was unknown, or that it was never in the party's power to have made the motion in open Court, during any previous Court. (*Vide*, 1802 R. 91. 1814 R. 77.)

Affidavit that motion could not be made in open Court.

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a. Barmore vs. Jay, 2 McC. 371.
b. 49th and 50th Rules repealed, and additional rule, 95, substituted.
c. 1800, 5 Stat. 331 § 4. 1731, 3 Stat. 285 § 40.
d. 1818, 7 Stat. 321.

ADMISSIONS.

When received.

55. In the absence of any party, or his attorney, no admission shall be received, in any case whatever, by the Court, unless such admission be produced in writing, and filed, or proved, according to the rules of evidence. [a] (*Vide*, 1802 R. 92. 1814 R. 78.)

CONCERNING COUNSEL.

In the Appeal Court.

56. Not more than two counsel shall be heard on the same side, in any cause, in the Appeal Court, except in criminal cases, affecting the life of the party. (*Vide*, 1814 R. 86. 1836 R. 11.)

In the C. C. P. and G. S.

57. Not more than two counsel shall be heard on the same side, in any cause tried in the Circuit Court, nor shall any assistant counsel be heard on the part of the prosecutors, in the Court of Sessions. Provided, however, that in capital criminal cases, the Court may, in its discretion, allow assistant counsel, on the part of the prosecution, on the application of the Attorney-General, or Solicitor; and additional counsel, on the part of the prisoner, on his application. (*Vide*, 1818 R. 91.)

CONSTABLES.

Their attendance.

58. The Sheriff shall always have in attendance, as many constables as the law requires, and shall provide a staff for each constable summoned. Those who do not appear according to the summons, or shall absent themselves from the Court, without leave, shall be proceeded against, and fined in the manner prescribed in relation to jurors, unless the Court think fit to proceed more summarily against them. [b] (*Vide*, 1802 R. 81, 83. 1814 R. 69, 71.)

Clerk to keep a list of Constables.

59. Every Clerk shall keep an accurate list of all the constables appointed, placing their names in one column, and the dates of their qualifications in another, and the time of their death or discharge, in a third. [c] (*Vide*. 1802 R. 82. 1814 R. 70.)

MOTIONS AT THE CIRCUIT COURTS.

In writing and signed.

60. Every motion made, for any rule, or order, shall be submitted to the Court, in writing, by the counsel who makes it; and if granted by the Court, shall be signed by the Judge, and delivered to the Clerk to be entered on the minutes. [d] (*Vide*, 1800 R. 57. 1814 R. 55.)

Court open—Rules & filing papers.

61. When the Court is open, and sitting, no rule or order shall be granted, or made, which can be obtained in course at the Clerk's office, unless specially ordered by the Court; nor shall any paper be filed in Court, during the hours of the Court's being opened; and every rule or order made, and every filing of any paper, contrary to this rule, shall be void. (*Vide*, 1800 R. 51. 1814 R. 51.)

Opening and reply.

62. On all rules to show cause, the party called on shall begin and end his cause; and on all special matters, either springing out of a cause, or otherwise, the actor, or party submitting a point to the Court, shall, in like manner, begin and close; and so shall the defendant, when

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a. Dunklin vs. Whitlaw, 1 McC. 492.
b. 1741, 3 Stat. 586. 1816, 6 Stat. 29 § 2: 1839, 11 Stat. 31 § 25: 56 § 9: 74 § 14: 78 § 31: State vs. Williams, 2 Speer, 26.
c. 1839, 11 Stat. 73 § 11: p. 55.
d. 1839, 11 Stat. 71 § 8, ch. 1, 2.

he admits the plaintiff's case, and takes upon himself the burthen of the proof, have the like privilege.[a] (*Vide*, 1800 R. 55. 1814 R. 53.)

Explanation afterwards.

63. No attorney shall ever attempt to argue, or explain, a case, after he has been fully heard, and the opinion of the Court has been fully pronounced, on pain of being considered in contempt. (*Vide*, 1800 R. 56. 1814 R. 54.)

MISCELLANEOUS.

Ex'on after notice of appeal.

64. In all cases in which a party shall receive notice of appeal to the Appeal Court, from the decision on the circuit, he shall have leave, notwithstanding, to enter up his judgment, and lodge his execution to bind property; but if the motion in the Appeal Court be sustained, then the judgment and execution, shall be wholly set aside. (*Vide*, 1800 R. 50. 1802 R. 66. 1814 R. 50.)

Affidavit of Def'dt in the Sessions.

65. No defendant, in the Court of Sessions, shall be permitted to submit any affidavit to the Court, which goes to deny matters of fact, after a verdict against him; but he shall confine himself to matters in extenuation, or mitigation only; and these affidavits shall be filed, so as to allow the Attorney-General, or Solicitor, a reasonable time to answer them, or they shall not be heard. (*Vide*, 1800 R. 54. 1814 R. 52.)

Declaration, &c. in Clerk's Office.

66. No Clerk shall suffer a declaration to be taken out of his office, after it is filed, until issue be joined, or until an order for judgment be obtained. In the former case, the plaintiff shall be entitled to possession of the pleadings; in the latter case, the party in whose favor the judgment is entered; but either party shall be at liberty, at any time, to inspect the pleadings, and to take copies thereof.[b] (*Vide*, 1796. 1800 R. 41. 1814 R. 41.)

Leave to file declaration.

67. If the plaintiff should not file his declaration before the first day of the second term, after the return of the writ, he shall not be permitted to file it afterwards, without obtaining leave to do so: and he shall give four days notice to the adverse party, of the time and place, when and where, he intends to move for leave, unless the motion is made in open Court: in which case, one day's notice shall be deemed sufficient.[c] (*Vide*, 1758 R. 10. 1796. 1800 R. 52. 1814. R. 42.)

Book of Fines.

67. The Clerk of each Court shall keep a book, in which shall be entered the names of all persons who have been summoned as jurors, or bound in recognizances, and have made default: and he shall note, opposite to the name of the defaulter, whether he be fined or excused; and if fined, the amount of the fine; or by whom, and when excused: and the Clerk shall enter into this book, the amount of fines laid, or incurred by law, by any other persons than those referred to in this rule, with the names of such persons as are fined, or who incur them, in a column, shewing when the fine was paid, or why, if not paid.[d] (*Vide*, 1800 R. 58. 1802 R. 93. 1814 R. 56.)

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a. Gray vs. Cottrell, 1 Hill, 33; Johnson vs. Wideman, Dud. 325; Hagood vs. Cathcart, Rice, 262.

b. 1839, 11 Stat. 73 § 9.

c. 1791, 7 Stat. 263; 1712, 2 Stat. 515; Bank of the State vs. Torre, 2 Speer, 501. Perry vs. Aiken, 3 Rich. 61.

d. 1839, 11 Stat. 72 cl. 10.

Copy of Indictment.

68. A copy of the indictment in cases of felony, shall be obtained by order of the Judge, before whom the case was brought, before an action for malicious prosecution shall be commenced.[a] (*Vide*, 1814 R. 79.)

Party indicted, to be present.

69. No person shall be tried on an indictment, unless personally present, except for misdemeanors.[b] (*Vide*, 1814 R. 80.)

Size of declaration & other papers.

70. No declaration shall be filed, unless written crosswise on a whole sheet of paper of the size of pro patria paper, and folded and indorsed, according to established custom; nor shall any plea, demurrer, or other pleading be filed, unless written upon the declaration, or upon, at least, a half sheet of paper of the same size. (*Vide*, 1802 R. 89. 1814 R. 75.)

Issues from Equity, how docketed.

71. Where an issue has been directed from the Court of Equity, to be tried in the Court of Common Pleas, the Clerk of the Court shall give it place on the docket, from the time the application is made to docket it, and not prefer it to other causes previously docketed. (*Vide*, 1814 R. 87.)

Tenant sued, real owner may defend.

72. When a tenant is sued for land, of which he is in possession, the real owner may enter himself on the proceedings, as the defendant in the suit, and shall be entitled to make such defence, as if he had been the original defendant in the action.[c] (*Vide*, 1814 R. 88.)

Costs in new trial cases.

73. In all cases, in which a new trial shall be ordered, the costs shall abide the event of the suit, except when there shall be given a special direction respecting the costs. (*Vide*, 1818 R. 90.)

Security for costs.

74. Whenever the plaintiff shall be required to give security for costs, the security shall be taken in the form following; and no other security for costs, shall be regarded as a compliance with the order; but nothing in this rule shall be construed to prevent the plaintiff from depositing a sufficient sum of money with the Clerk to pay the costs.[d]

STATE OF SOUTH-CAROLINA,
..... *District.*

A. B....., v. C. D....., } Debt or other action, as the case may be.

I (or we, as the case may be,) acknowledge myself, (or ourselves,) liable for the costs of this case, and consent that if the plaintiff fail to recover, the defendant may have execution for his costs against me, (or us, as the case may be.)

Given under .... hands, this .... day of .... 18.....

E. F...., (F. G.....)

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a. Taylor vs. Cooper, 2 Mills, C. R. 203; Mims vs. Burts, Id. 308: Burton vs. Watkins, 2 Hill, 674.

b. 1833, 7 Stat. 333.

c. Kennedy ads. Campbell, 3 Brev. 553; McKie vs. Garlington, 3 McC. 276; Evans vs. Hinds, 2 Hill, 527; Crosby vs. Floyd, 2 Bail. 116.

d. 1839, 11 Stat. 77 § 22: Nolly vs. Squire, 1 Hill, 41: Boyd vs. Graham, 2 Hill, 558; Bomar vs. Trail: Same vs. Williams, 1 Bail. 533: McCollum vs. Massey, 2 Bail. 606; Crawell vs. Littlefield, 2 Rich. 10, 17; Commissioners of Treasury vs. McKie, 1 N. & McC. 575; Dismukes vs. Dismukes, 1 McC. 552; Day vs. Wilcox, 2 McC. 454.

ACTIONS ON SHERIFFS' BONDS.

After judgm't once recover'd

75. After a judgment has been recovered on a Sheriff's bond, it shall stand as a security for any former or subsequent breach of it: and any one who may conceive himself aggrieved by the misconduct of the Sheriff, shall have a right to come in, and suggest the breach of the bond of which he complains, and pray execution for his damages; and upon serving a thirty day rule upon the Sheriff, and his sureties, or such of them as judgment had been rendered against in the first action, requiring them to plead to the suggestion, shall, in default of such plea, or upon issue joined, have his damages assessed by the verdict of a jury, and have execution for the penalty to enforce the payment of the damages assessed. [a]

BAIL BONDS.

Bail to have an *exoneretur* must make oath.

76. Before any appllication shall be heard, on the part of bail, to have an *exoneretur* entered on his bail bond, on account of a variance between the affidavit and the bail bond, he shall swear, that he was ignorant that the cause of action declared on, was the one intended to be embraced in the affidavit; that he executed the bail bond, believing the cause of action was different from the one set out in the declaration; and that he has sustained some prejudice or injury thereby. [b]

APPEAL COURT.

Notice of Appeal.

77. The party intending to appeal from a verdict, or any point of law decided against him at the Circuit Court, shall, in proper person, or by his attorney, give notice in writing, of his motion, and of the grounds thereof, to the other party, or his attorney, and the judge who tried the cause, on the day next after the decision of the case. (*Vide*, 1794 R. 1. 1800 R. 45. 1814 R. 45. 1836 R. 1.)

Judge's Report.

78. The Judge shall, as soon after the receipt of the notice as may be convenient, make out a report of the facts, and the points of law involved in the case, with his opinion thereon, and state whether upon the facts he is, or is not, satisfied with the verdict, and deliver the same to the appellant's attorney, or the Clerk of the Court of Appeals. [c] (*Vide*, 1836 R. 2.)

Where to be deposited.

79. When the report has been delivered to the appellant's attorney, he shall deposit the same with the Clerk of the Court of Appeals, before he will be allowed to docket his cause. (*Vide*, 1833 R. 96. 1836 R. 3.)

Copies of Judge's report

80. The appellant at the hearing of the cause in the Court of Appeals, shall furnish to each of the Judges, who may sit to hear it, a copy of the report of the Judge who tried it, written, or printed upon, at least, a full sheet of pro patria paper. [d] (*Vide*, 1800 R. 46. 1802 R. 65. 1814 R. 65 and 84. 1824 R. 93. 1836 R. 4.)

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a. 1792, 7 Stat. 280; Treasurers vs. Munday, 3 Hill, 169; Treasurers vs. Bates, 2 Bail. 380: Treasurers vs. Buckner, 2 McMul. 323: Mulligan vs. Norton, Charleston, Jan. 1848, 2 Strob.

b. 1839, 11 Stat. 20 § 21; 78 § 32; 7 Stat. 204 § 20; 294 § 6: Rosenburg v. McKain, 3 Rich. 145; Vance vs. Findley, 1 N. & McC. 578; Spragella vs. Bruno, 1 Mills, C. R. 280; Bennett vs. Brown, 1 Strob. 303: Ancrum vs. Sloan, 1 Rich. 421, and cases cited in these.

c. 1824, 7 Stat. 325 § 3.

d. See additional Rules 89 and 92.

Office copies of records.

81. The appellant in a case, relying on an exception to the record, shall procure, and bring up to the Court of Appeals, an office copy. (*Vide*, 1814 R. 85. 1836 R. 5.)

Appeals when docketed.

82. All appeals shall be docketted the first term of the Appeal Court, after they are decided, and on or before the sitting of the Court.[a] (*Vide*, 1794 R. 2. 1836 R. 9.)

Copies of papers.

83. In all cases wherein there shall be written testimony, or papers necessary to a correct understanding, and decision of it, it shall be the duty of the appellant's attorney to bring up copies of the same. The originals, except for the purpose of inspection, will not be received by the Appeal Court.[b] (*Vide*, 1836 R. 12.)

Appeal dockets.

84. In Charleston, the Clerk shall make out a docket for country causes, which shall be heard the first days of each term, and docketed in the order in which they shall be handed to the Clerk. And those from Charleston, shall be docketed in like manner, and be heard as soon as the country causes shall be disposed of. In Columbia, all appeals shall be placed on the same docket, and heard in the order in which they are docketed.[c] (*Vide*, 1836 R. 13.)

Cases submitted, when regarded as abandoned.

85. No opinion in a cause submitted will be delivered, unless the attorney furnish an argument in writing; and when this rule is not complied with, the appeal will be considered as abandoned, and the cause struck from the docket. (*Vide*, 1836 R. 14.)

Examination of Law Students.

86. Petitions for admissions to the Bar, shall be presented on or before the Monday of the second week of the term. And the examination of the applicants, shall be by a committee of the Bar, on such heads as the Court may direct. The Clerks of the Appeal Court, shall make out a copy of the docket for each of the Judges.[d] (*Vide*, Res. H. R. 1788, ante p. 8. 1836 R. 15 & 16.)

Rules of C. C. P. of Westminster.

87. All cases not provided for in any of the foregoing rules, shall be governed by the practice of the Court of Common Pleas at Westminster, so far as they are consistent with the laws of this State.[e] (*Vide*, 1758 R. 24. 1800 R. 61. 1814 R. 81.)

Repealing clause.

88. All rules, heretofore, adopted for the government of the practices of this Court, either in the Circuit, or in the Appeal Court, shall be, and they are hereby repealed.

RICHARD GANTT,
J. S. RICHARDSON,
JOHN BELTON O'NEALL,
JOSIAH J. EVANS,
B. J. EARLE,
A. P. BUTLER.

December 10, 1837.

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a. 1842, 11 Stat. 222 § 5; 1843, 11 Stat. 254.
b. State vs. Williams, 1 Rich. 188.
c. 11 Stat. 222; 254.
d. 1812, 5 Stat. 677; see additional rules, 90 and 91.
e. Robertson vs. Shannon, 2 Strob.; 1824, 7 Stat. 326 § 4; 1791, 262 § 4; 1789, 253; 1768, 199 § 3; 203 § 15; 1737, 190 § 2; 1721, 169 § 12; 1783, 5 Stat. 78.

Additions and Alterations since 1837.

In the Law Court of Appeals, Columbia, May 1841.

89. It is ordered, after this term, that counsel appealing, furnish to each member of the Court, and the Reporter, at the call of the case, with a printed copy of the report containing the grounds of appeal. [a] Copies of Report to be furnished Judges and Reporter.

In the Law Court of Appeals, Charleston, February 16, 1842.

Present—Judges Richardson, O'Neall, Evans, Butler and Wardlaw.

The following rule was adopted:

90. Hereafter, no Student of Law shall be examined for admission, until he has attained the age of twenty one years. [b] Qualifications of Law Students.

In the Law Court of Appeals, Charleston, March 2, 1842.

91. The Law Court of Apeals, for the purpose of ensuring a more thorough preparation on the part of the Students of Law, to be admitted to the Bar, recommend the following course of reading: Course of Study.

1. Blackstone's Commentaries.
2. Stephen's Pleading.
3. Phillips' Evidence.
4. Chitty on Contracts.
5. Hales' Pleas of the Crown.
6. Kent's Commentaries.
7. Chitty on Bills.
8. Williams' Law of Executors.
9. Chitty's Pleadings.
10. Our own reports, read in connection with, and as illustrating, enforcing or altering the principles contained in the above works.
11. The Constitution of this State and of the United States, the Statute Law, and more especially the following Acts:
    1. The Act of distribution and its amendments.
    2. The Statute of Frauds and Perjuries.
    3. Acts in relation to Executors and Administrators.
    4. Acts of Limitation.
    5. Act of 1740 and other Acts relating to Slaves and Free Negroes.
    6. Acts relating to Dower, Jointure, and the inheritance of married women.
    7. Acts relating to Joint Tenancy, Tenancy in Common, Coparcenary and Partition.
    8. Acts relating to Mortgages, Conveyances, and Recording.
    9. Acts in relation to the Courts, to Process, Bail and Practice.

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a. See Rule 80, page 45.
b. See Rule 86, page 46.

10. The Insolvent Debtors and Prison Bounds Acts.
11. The Attachment Acts.
12. Acts relating to Wills.
13. Acts of 1839, in relation to Public Officers.
14. The Acts in relation to the power and duties of Magistrates and Constables.
15. The Acts creating crimes, or changing the punishment of Common Law Offences.
16. The Militia and Patrol Law.
17. The Fee Bill, and Acts relating to costs.
18. The Act of 1825 in relation to the power and duties of the Comsioners of Roads and the amendments since passed.
19. Statute 3 and 4 Anne, and the Act of '98 in relation to Bonds and unnegotiable Notes.
20. The Statutes and Acts regulating Distress, Replevin, and relating to Landlords and Lessors.
21. Statutes of Forcible Entry and Detainer.
22. Statute 31. Ch. 2, c. 2, commonly called the Habeas Corpus Act.
23. Statutes of Jeofail.
24. Acts relating to Juries and Jurors.
25. Acts relating to locating and granting lands, to Caveats, to the evidence in actions to try titles to land, and to the action of Trespass to try Titles.
26. The Acts on the subject of Apprentices.
27. The Tax Act of 1788, and the amendments since passed.

It will be expected that the above course will be read and reviewed, and a certificate of some attorney to that effect will be required to be filed with the petition.

The Students will be examined on the above.

The Clerk at Charleston will communicate the foregoing to the Clerk at Columbia, and they will respectively give notice forthwith in the papers published in Charleston and Columbia. By the Court,

THOS. J. GANTT, *C. C. A.*

Charleston, 29th January 1845.

Present—Judges Richardson, O'Neall, Evans, Butler, Wardlaw and Frost.

Original Report to be produced.

92. No case will be hereafter heard, until the original report be produced. [a]

Charleston, Tuesday 11th February 1845.

[It having been unanimously decided, in the case of the State vs. Bennett Dozier, 2 Speers, 211, that a venire for the jury, could only legally issue under the seal of the Court, and now, at this term, the Court finds the said decision has not been generally known or conformed to, and that many venires may have issued unsealed: It is therefore ordered, that the Clerks of the several Courts of the General Sessions of the Peace and Common Pleas in the respective judicial districts of this State, (if any of them, may have issued, without the seal of the Court, venires to the approaching terms of their respective Courts,) do forthwith seal the said venires, and thereupon, that the Sheriffs respectively do resummon the jurors who may have been summoned before the said writs were sealed; and that]

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a. See Rule 80, page 45.

93. Hereafter, no Clerk shall issue any venire, until the seal of the Court shall be affixed thereto; and on the first day of each term, or of each week, where the term consists of more than a week, the Clerk shall produce to the Judge presiding, the venires for the term, or for that week, and if they, or any of them, are not under the seal of the Court, in such case the Clerk shall be fined at the discretion of the Judge so presiding. [a] Seal to Venire.

J. S. RICHARDSON,
JOHN BELTON O'NEALL,
JOSIAH J. EVANS,
A. P. BUTLER,
D. L. WARDLAW,
EDWARD FROST.

Payment of money into Court. Columbia, December 1845.

94. It is ordered, That every order for payment of money into Court, whether so expressed or not, be understood to be made, on condition that the party desiring to make the payment procure the taxation of costs up to the time of payment, and pay all such costs, including the Clerk's commissions; and that the Clerk give no receipt for the sum ordered to be paid in, until all such costs be paid to him, or to the persons entitled to receive the same; and that, if the plaintiff should take the money out of Court, before final determination of the suit has been ordered, the Clerk shall, in the receipt to be taken for the money, require such plaintiff to say, for information of the defendant, whether he accepts the money in full discharge of the action, or takes it with the intention of proceeding further. [b] Order for payment of money

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In the Court of Appeals, Columbia, Spring Sittings 1846.

It is ordered, That the 49th and 50th Rules of Court, be rescinded, and instead thereof, the following rule be adopted:

95. Commissions for the examination of witnesses, when executed, may be returned by mail; provided they be sealed up, and directed to the Clerk of the Court from which they issued; and that upon the envelope shall appear the names of the Commissioners, written by themselves across the seals, and the proper postmark. [c] Commissions.

J. S. RICHARDSON, *Presiding Judge.*

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a. See State vs. Voss, 1 Rich. 183.

b. See Broughton vs. Richardson, 2 Rich. 64, and cases there cited. Mazyck vs. McEwen, 2 Bail. 23.

c. 1839, 11 Stat. 75 § 17; 2 Rich. 527. Concerning the Clerk's duty in granting commissions, and of the service of the interrogatories, see Gooday vs. Corlies, 1 Strob. 201; Dogan vs. Ashby, Id. 436.

Rules and Orders of the Court of Equity,

FROM 1791 TO 1800; SINCE SUPERSEDED.

1. No subpœna or other process for appearance, shall issue (except in cases to stay waste) till after the bill is filed.

2. Subpœnas shall be served personally, or left with one of the family at the place of abode of the person to whom directed.

3. There shall be *twelve days* between the *test* and *return* of subpœnas ad respondendum, except the defendant lives within *ten* miles of the place in the district where the Court is to be held, and then it is to be returnable immediately.

4. Upon the day of the return of the subpœna the defendant shall appear, by his solicitor, in case he was served with the said subpœna, *eight* days before the return: if not, that then he shall appear within eight days after the serving the subpœna, except, as is before excepted, where he shall appear immediately.

5. In case the defendant do appear, he shall constitute a solicitor to appear and act for him, so far as a solicitor can or may lawfully act, during the continuance of the suit, and file the warrant, or order, to appear for him in the Register's office.

6. In case the complainant be out of this State, and sueth by attorney, then security shall be given by such attorney, for payment of costs, in case the suit be dismissed before a writ of subpœna ad respondendum be granted.

7. The defendant appearing, shall put in his plea, or demurrer, or answer within *fifteen* days, except he shew good cause to the contrary; otherwise, an attachment to be granted against him, provided he can then have a copy of the bill; otherwise, within fifteen days after he hath procured a copy of the bill.

8. Where the defendant doth wilfully refuse to answer, and stand out all process of contempt, the Court will take the matter *pro confesso*, and decree; the defendant having before appeared, or being in custody.

9. The defendant being served with process to answer, by advice of counsel, upon sight of the bill, may be enabled to demur thereunto, if there be cause, or may put in a just plea.

10. Every demurrer shall express the several causes of demurrer, and shall be determined in open Court.

11. If upon any slip or mistake in the bill, the plaintiff, upon motion before the Master in Equity, (within *eight* days after the demurrer put in and not after that time) may amend the bill, upon payment of costs.

12. If the demurrer be admitted by the plaintiff to be good, within *eight* days after the filing of it, and he doth pay the defendant, or his solicitor costs, then the bill shall stand dismissed of course, without motion, unless both sides agree to the amendment of the same; but such dismission is no bar to a new bill to be exhibited by the plaintiff.

13. In case the plea, or demurrer be allowed, the complainant's bill shall be dismissed with costs: and if the defendant's plea or demurrer be overruled, the defendant shall pay costs, and not be admitted to put in his answer till the said costs are paid.

14. If the defendant plead that there is another suit depending for that very cause, or that the cause has been formally dismissed, and the dismission signed and enrolled in the Court of Equity, if the plaintiff be not satisfied therewith, the same shall be referred to the Master in Equity; and if it be determined against the plaintiff, he shall pay costs to the defendant: but such reference must be procured by the plaintiff, and a report thereupon, within *one month* after filing such plea, otherwise the bill to be dismissed of course, with costs.

15. All pleas, but matter of record, must be upon oath.

16. Where the plaintiff conceived the plea for matter of manner nought, he may put it to the judgment of the Court, if he signify the same to the defendant, or his solicitor, within six days after filing the plea.

17. Upon the plea or demurrer being overruled, a new subpœna shall be granted, for the defndant to put in his answer in *ten* days, or otherwise an attachment to be granted.

18. If the defendant appear by solicitor, upon affidavit made, that the defendant is not able to travel, for answering the same cause personally in equity, by reason of extreme old age, or other infirmities, or reasonable cause, then a commission shall be granted to two or more gentlemen of credit, to receive and certify his answer.

19. An answer to a matter charged as a defendant's own act, must regularly be without saying to his remembrance, or as he believeth, if it be said to be done within seven years before, unless the Court, upon the exception taken, shall find special cause to dispense with so positive an answer; and if the defendant deny the fact, he must traverse or deny it, as the cause requires, directly, and not by way of negative pregnant: as if he be charged with a receipt of a sum of money, he must traverse or deny that he hath not received that sum, or any part thereof, or else set forth what part he hath received: and if the fact be said to be done with divers circumstances, the defendant must not deny or traverse literally, as it is laid in the bill, but must answer the point of substance positively and certainly.

20. If the answer be good to common intent, the plaintiff must reply, and prove the matter if he can, and not stand upon the insufficiency of the answer.

21. In case the answer is imperfect, the complainant in eight days after he can procure a copy of the answer, shall put in his exceptions, otherwise none to be admitted without a particular order of the Court, if sitting, or the Master or Commissioner in Equity, in case the Court is not sitting.

22. If the defendant shall fail to amend his answer, the exceptions, within eight days after the filing thereof, shall be heard before the Master or Commissioner in Equity.

23. The insufficiency appearing on the exceptions to be insisted on, and no new exceptions to be put in.

24. If the answer be certified insufficient, the defendant is to pay costs: and the defendant's second answer is not to be received till he hath paid the costs; but the defendant may have liberty to appeal from the report of the Master to the Court.

25. If the second answer be reported insufficient to any of the points before certified (for the report must specify the point upon the exceptions wherein the answer is defective) the defendant shall pay, for every insufficient answer, such costs as may be taxed, and may be examined upon interrogatories to the point or points reported insufficient: and shall be committed until he hath perfectly answered the interrogatories, and paid the costs.

26. The plaintiff may have a subpœna for costs, and another for a better answer upon any of those insufficiencies.

27. If the answer be reported good, the plaintiff shall pay the defendant's costs.

28. Upon a subpœna for costs, and he make a better answer, the costs are to be paid on the service, and the defendant to appear on the subpœna, and answer as in the first subpœna, but upon report upon a second insufficient answer in eight days, without further service, and if he does not answer in the time, an attachment issues as if he had been served.

29. If either party appeal from the Master's report, as they may do in all the said cases against the appealer, he shall pay such costs as shall be taxed.

30. Where the plaintiff finds sufficient cause for an order, or decree, upon the answer alone, he may go to hearing upon bill, and answer only, provided he, or his solicitor, signify his intentions so to do, and give notice, in writing of the same to the defendant, or his solicitor, twelve days before the sitting of the next Court of Equity.

31. In such case the answer is to be admitted true in all points; and no evidence is to be admitted unless it be matter of record to which the answer refers, and is proveable by the record.

32. If the Court shall not find ground to make a decree, the bill shall be dismissed with costs.

33. When a commission to examine witnesses is required, the complainant's solicitor may, within six days after the pleadings are complete, move the Master or Commissioner in Equity for a commission, giving the defendant, or his solicitor, notice thereof in writing, one day before; and in case the defendant do not, within six days after such motion made, (he or his solicitor, being served with a copy thereof at any time within two days before the expiration of the said six days,) come and join in a commission to examine witnesses then a commission shall be granted to the plaintiff exparte.

34. In case an issue be joined, and the plaintiff and defendant join in commission, there shall be four Commissioners.

35. The plaintiff shall name four, and the defendant four; out of each of which the Court, if then sitting, or otherwise the Master in Equity, shall take two from each nomination,

36. The complainant must name one Commissioner, unto whom the defendant may give general exceptions; the defendant to name the second, the complainant the third, and the defendant the fourth.

37. When both the plaintiff and defendant have examined what witnesses they please, then either of them may give the other, or his solicitor, a rule for publication, within one week; which being expired, and no cause shewn to the contrary, then publication is granted by the Master in Equity; or else publication may pass by consent, the solicitors on both sides setting their hands to each consent.

38. No witnesses to be examined after publication, without special order of the Court.

39. If the plaintiff appears not, the defendant is to be dismissed with costs, excepting the Court shall think fit to allow him a longer time; but such dismission shall not be a plea, in bar of a new bill, but a second shall.

40. If the defendant doth not appear, the bill and answer, &c. shall be read. If the Court, upon hearing, shall find cause to decree for the plaintiff, yet a day shall be given for the defendant to shew cause against the same; but before he be admitted thereunto, he shall pay down to the plaintiff, or his solicitor, such costs as the Court, upon hearing shall assess; and the order shall be penned by the Register accordingly, viz: It is decreed, &c., unless the defendant shall pay to the plaintiff, or his solicitor, in Court, the costs, or shew cause to the contrary; and the defendant shall likewise produce a certificate from the plaintiff's solicitor, in Court, that he hath paid the costs, or affidavit of tender and refusal.

41. Where either party are not satisfied with the order made on hearing, on petition signed by counsel, that shews cause, the Court will re-hear.

42. Such petition to be preferred at any time within three days after the making of such order upon hearing.

43. Within eight days after making the decree, or the dismission of the suit, the decree shall be fairly drawn up, and presented to the Judges to be signed, and after that enrolled.

44. Where the cause is dismissed upon a full hearing, the decree signed and enrolled, it cannot be again retained, or a new bill admitted, but where there is new matter.

45. The decree enrolled, and the party served with the same, by delivering a copy of the same attested by the Register, if he do not yield obedience to the same, an attachment shall be granted against him, or such other process as is allowed by the law.

46. The party being taken, is to be straitly imprisoned, and not to be at liberty till he obey, viz: that he perform that part of the decree which is presently to be done, and give security to perform that part which is to be done for the future.

47. Where the decree is for the payment of a sum of money it must be demanded by the plaintiff himself; or he that served it must have a letter of attorney to receive it.

48. No bill of review shall be put in, except the party that prefers it enters into recognizance, with sureties, for satisfying of costs and damages for delay, if it be found against him. No bill of review is grantable, but upon error in law appearing in the body of the decree itself, *without averment*, or further examination of any matter of fact, which might have been had at the time of the decree, unless he there shew new matter which had risen in time after the decree, whereof the plaintiff could not have advantage before; and then, upon oath made that there is a discovery of such new matters, the bill of review by leave of the Court, may be exhibited.

49. The bill of review shall not be granted, unless the decree be first obeyed and performed.

50. Where the decree is to deliver writings, or pay money, he must perform this, excepting by special order of the Court, security shall be ordered to be taken instead of an actual performance of the same, till the bill of review be determined.

51. No witnesses, which either were or might have been examined upon the former bill, shall, upon the bill of review, be examined to any matter, unless the Court shall provide otherwise, by particular motion, upon oath made, that there is a discovery of some new matter upon which such witnesses can give evidence.

52. The Master or Commissioner, in all matters referred to them, having heard both parties on the subject so referred, and prepared his report, shall issue a summons for them, or their solicitor, to attend and peruse his report, and take a copy of it; and if either party is dissatisfied therewith, he shall, within six days after such attendance, bring in a note, in writing, of his exceptions thereto, and take out a summons to be heard thereon; a copy of which he shall serve on the adverse party, or his solicitor, at least one day before hearing; and the Master or Commissioner, shall then settle and finish his report as he shall think just and equitable.

53. No exceptions to the Master's or Commissioner's report will be heard by the Court, until they have been previously argued before him.

54. The injunction to stay proceedings at law, must be served either on the party himself, his counsel, or solicitor, as the cause requires, and afterwards filed in the office of the Clerk of the Court of Common Pleas.

55. The first and last days of the term are appointed for hearing motions generally, on which days no causes will be heard; but motions of course may be made any day in term, at the rising of the Court after the causes are heard.

56. The Register shall not set down any cause for hearing before the pleadings are completed and filed in his office; and all causes shall be entered with the Register ten days (exclusive of Sundays) previous to the first day of each term.

57 The Register shall send to each of the Judges a docket of the causes entered with him, nine days before the first day of the term.

58. The second day of the term the Court will proceed to call the docket, and will sit to hear such causes as may be then ready: those wherein the parties are not prepared at the second call of the docket will remain over to the next term.

59. Briefs are to be delivered at the Judge's Chambers, for causes to be heard at Charleston, three days (exclusive of Sundays) before the first day of term; and for causes to be heard in the upper districts, briefs are to be left with the Registers of the respective districts within the time above mentioned.

60. No cause will be heard unless entered with the Register, and briefs are delivered agreeably to the foregoing rules.

61. That the two inner benches of the Court be reserved for the elder practitioners of the bar; the second bench on the right or south side, to be occupied by the younger practitioners; and the two outer benches on the north side, by the students of the law. The gentlemen of the bar to take their seats according to seniority of the dates of their respective admissions.

September Term 1791.

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62. That the grounds of such motions as are appointed to be heard on the first and last days of the term, shall be reduced to writing by the party, or his solicitor, intending to make the same; a copy of which shall be served on the adverse party, or his solicitor, four days before the first day of the term.

June Term 1792.

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63. That all executions, in future, shall be returnable on the first day of the term.

March Term 1796.

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64. That gowns, bands and black coats, be the habit of the term, and that no gentleman be permitted to address the Court, unless he appears in his own gown.

JOHN NEUFVILLE, Jun., *Register in Equity.*

May Term 1800.

Rules of the Court of Equity,

ESTABLISHED BY ORDER OF THE JUDGES, MARCH 1810 & AFTERWARDS: NOW OF FORCE.

SUBPŒNAS: 1. No subpœna or other process for appearance shall issue, (except to stay waste) till after the bill is filed.

How served. 2. All subpœnas ad respondendum, shall be served personally, or where the defendant cannot be found, but is within the State, by leaving a true copy of the writ at the dwelling house, or most usual and notorious place of residence or habitation, of the person to whom directed. [a]

Appearance. 3. In case the defendant do appear, he shall constitute a solicitor to appear and act for him, so far as a solicitor can or may lawfully act, during the continuance of the suit, and file the warrant of order to appear for him in the Register's office.

Security for costs. 4. In case the complainant reside out of the State, the defendant may, at any time after the service of the subpœna, obtain an order for the complainant to put in security for costs, before the master or commissioner; and if such security be not put in within thirty days after the service of such order on the complainant's solicitor, the bill shall stand dismissed, unless the Master or Commissioner, on cause shewn, shall grant further time.

DEMURRER. 5. Every demurrer shall express the several causes of demurrer, and shall be determined in open Court.

Amendment of Bill. 6. Upon any slip or mistake in the bill, the plaintiff, on motion before the Master or Commissioner, may, (within thirty days after demurrer put in, and notice thereof,) amend, on payment of costs.

Demurrer admitted good by Plaintiff. 7. If the demurrer be admitted by the plaintiff to be good within thirty days after filing it, and he doth pay the defendant, or his solicitor, the costs, then the bill shall be dismissed of course, without motion; unless both sides agree to the amendment of the same: but such dismission is no bar to a new bill to be exhibited by the plaintiff.

Demurrer allowed. Overruled. 8. In case the plea or demurrer be allowed, the complainant's bill shall be dismissed with costs; and if the defendant's plea or demurrer be overruled, the defendant shall pay costs.

Plea of anoth'r suit pending. 9. If the defendant plead that there is another suit depending for that very cause, or that the cause had been formerly dismissed, and the dismission signed and enrolled in the Court of Equity, if the plaintiff be not satisfied therewith, the same shall be referred to the Master or Commissioner in Equity; and if it be determined against the plaintiff,

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a. Southern S. P. Company vs. Roger, Cheves, Ch. R. 48.

he shall pay costs to the defendant; but such reference must be procured by the plaintiff, and a report thereon, within thirty days after filing such plea, otherwise the bill to be dismissed, of course.

Pleas, when to be on oath.

10. Pleas to the jurisdiction, and pleas of any matter of record, or of matters recorded in this Court, need not be upon oath: but pleas in bar founded on matters in pais, are to be on oath.

Defendant, when to pay costs.

11. Upon demurrer being overruled, the defendant shall pay costs, and put in plea or answer, within thirty days thereafter; in like manner, if a plea be overruled, the defendant shall pay costs, and put in an answer within the same time; and in like manner, if a defendant on exception taken, be ordered to make a better answer, he shall pay costs, and put in his amended answer within the same time; otherwise in such cases, an attachment shall be granted, or the bill be taken pro fesso, at the election of the complainant; unless in either case further time be obtained according to the 13th section of the Act of Assembly, passed in December 1808.

Commission to take answer.

12. If the defendant appears by solicitor, upon affidavit made, that such defendant is absent from the State, then a commission shall be granted, by the Register or Commissioner, directed to two or more persons of credit to take and certify the answer; and the form of the oath shall be endorsed on the answer, be subscribed by the defendant, and be certified by the Commissioner, as having been subscribed and sworn; and where the defendant shall reside within the State, and shall have appeared as aforesaid, he shall be at liberty to swear to his plea or answer, before any Judge or Justice of the Peace of this State, and the form of the oath shall be endorsed on the answer or plea, be subscribed by the defendant, and be certified as aforesaid, by such Judge or Justice of the Peace; and where it may be necessary that any bill or petition be sworn to, the same may be sworn to, certified in the same manner.

Answer as to Deft's own act.

13. An answer, charged as a defendant's own act, must be without saying to his remembrance, or as he believeth, if laid to be done five years before, unless the Court upon exception taken, shall find special cause to dispense with so positive an answer: and if he deny the fact, he must traverse or deny it directly, and not by way of negative pregnant.

Imperfect Answer.

14. In case the answer is imperfect, the complainant in thirty days after he can procure a copy of the answer, shall put in his exceptions: otherwise, none to be admitted, without a particular order of the Court, if sitting, or the Master or Commissioner in Equity in case the Court is not sitting; but, in cases of injunction, or ne exeat, the Court on cause shewn, may require exceptions to be filed within a shorter period.

Exceptions when heard.

15. If the defendant shall fail to amend his answer, the exceptions within fifteen days after filing thereof, and notice to the defendant, shall be heard before the Master or Commissioner in Equity.

No new exceptions allowed.

16. The exceptions taken and specified, to be alone insisted on, and no new exceptions put in.

Answer insufficient, Def't. to pay costs.

17. If the answer be certified insufficient, the defendant is to pay costs; but the defendant may have liberty to appeal from the report of the Master to the Court.

Sufficient, Plff. to pay costs.

18. If the answer be reported good, the plaintiff shall pay the defendant's costs.

Commission to examine Witnesses.

19. The complainant upon bill filed, and thirty days after subpœna served, and defendant on plea or answer filed, may obtain a commission to examine witnesses, resident out of the State, on application to the Register or Commissioner, giving ten days notice thereof to the opposite party, and serving him at the same time with a copy of the interrogatories to be annexed; and if he does not put in cross-interrogatories before the expiration of that time, a commission shall be granted to the party applicant exparte: there shall be four commissioners, two to be named by each party, unless the opposite party shall not join in the commission, in which case they shall be named exparte, by the applicant, and the commission may be executed by any two or more of them. [a]

Aged & infirm Witnesses.

20. Witnesses unable to travel from age, sickness, or infirmity, may be examined by commission, if ordered by a Judge or Commissioner, on motion and affidavit; the applicant giving the same notice, and taking out his commission in other respects, as prescribed by the preceding rule. [b]

Sealing, &c. of Commissions.

21. Commissions, when executed, shall be sealed up by the commissioners, who shall execute the same, and directed to the Register or Commissioner of the Court from whence they issue, and shall not be opened, but on motion in open Court, or by consent of parties in writing.

Bill when dismissed.

22. If the plaintiff shall fail to appear and prosecute his suit, the bill shall be dismissed, unless the Court, on cause shewn, shall allow him further time; such dismissal, however, shall not be a plea in bar to a new bill, but a second shall.

Def't omitting to appear and defend.

23. If the defendant shall not appear and defend the suit, the bill and answer shall be read; if the Court, upon hearing, shall find cause to decree for the plaintiff, yet a day shall be given for the defendant to shew cause against the same; but before he be admitted thereunto, he shall submit to such conditions as the Court shall see fit to impose. [c]

Decrees, when to be enrolled.

24. Decrees may be enrolled at any time, not exceeding twelve months, after they shall be pronounced; unless by special order of the Court.

Execution, when to issue.

25. No execution or attachment for the enforcement of a decree, shall issue, until thirty days after the rising of the Court, during which such decree was pronounced; and if there be an appeal, then such execution or attachment shall not issue until thirty days after the adjournment of the Court of Appeals, at which the cause shall be determined, and all executions shall be returnable on the first day of the term, next after the same shall issue: unless otherwise ordered by the Court.

Exceptions to Master's Report. (Charleston.)

26. (FOR CHARLESTON.) The Master or Commissioner in all cases of reference, having prepared his report, shall issue a summons for the parties to attend him and peruse the same. And if either party is dissatisfied therewith, he shall within ten days after the time fixed for attendance, state his exceptions in writing, and take out a summons to be heard thereon; a copy of which, he shall serve on the adverse par-

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a. 1840, 11 Stat. 115 § 21.
b. 1840, 11 Stat. 111 § 10, 11.
c. Southern S. P. Company vs. Roger, Cheves Ch. R. 53.

ty, or his solicitor, at least three days before such hearing: and the Master or Commissioner shall, thereon, finally determine and report. [a]

27. (FOR THE COUNTRY.) On the Circuit, notice of all reports made in vacation, shall be served on the parties, or their solicitors, on or before the first day of the next term: and the party dissatisfied therewith, shall file his exceptions, and give notice thereof, on or before the second day of the same term. Notices of all reports in term time, shall be immediately served on the parties or their solicitors: and the party dissatisfied therewith, shall, within one day after such notice, file his exceptions: that in all cases where such exceptions are filed, and notice given, the Commissioners shall immediately proceed to hear, and thereon finally determine, unless he shall allow further time. Exceptions to Master's report (COUNTRY:)

28. The injunction to stay proceedings at law, must be served either on the party himself, his counsel or solicitor, as the cause requires, and afterwards filed in the office of the Clerk of the Court of Common Pleas. Injunction to be served and filed.

29. All causes shall be docketed ten days before the meeting of the Court; and no cause shall be docketed, until the pleadings are complete, and filed. Docket.

30. (FOR CHARLESTON.) Briefs shall be served with the Registers of the respective Circuit Courts, and Courts of Appeal, three days before the meeting of the Courts; and no cause will be heard, unless briefs are so delivered. Briefs. (CHARLESTON.)

31. (FOR THE COUNTRY.) On the Circuit, all briefs shall be served, on or before the meeting of the Court. Id. (COUNTRY.)

32. A decree being fully performed, the party satisfied, shall, on application made to him, enter satisfaction in a book to be kept for that purpose, by the Register or Commissioner, and on the enrolled decree, (if the same be enrolled,) and the Register or Commissioner shall grant certificates of satisfaction on application therefor. Satisfaction of Decrees.

33. When the bill or petition is dismissed, the costs shall be paid by the complainant; when sustained, by the defendant, unless otherwise ordered by the Court: the party, in either case, entitled thereto, may have an attachment or execution for enforcing payment thereof. [b] Costs.

34. Sundays are to be included in all the calculation of time under the preceding rules. Time, how computed.

35. (FOR CHARLESTON.) The bill being taken pro confesso, the order therefor, can only be set aside where the defendant shall give ten days written notice in Charleston, prior to the ensuing term, of his intention to apply for the same, on the first day of such term, and shall have previously filed, or on making the application, shall produce a full and explicit answer or plea, with a brief for the Court, and shall docket the cause for hearing, at the said term, and submit to any further conditions the Court may impose. If complainant be dissatisfied with the answer, he may, within ten days, tender exceptions, and if on reference thereof, the answer shall be adjudged insufficient, the bill shall be absolutely ordered to be taken pro confesso. But in making a final decree, where a bill has been taken pro confesso, the Court will require such proofs as shall satisfy it of the justice of the complainant's Bill taken pro confesso, order therefor, how set aside, &c. (CHARLESTON.)

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a. Ad. of Foote v. Van Ranst, 1 Hill C. R. 185.
b. Caston vs. Perry, Bail. Eq. R. 96.

demand; and the defendant may be heard touching the merits so disclosed, and may take advantage of any matter which would have been good cause of demurrer, but not of such as ought to have been presented by plea or answer. [a]

Bills taken pro confesso, order therefor, how set aside, &c. (COUNTRY.)

36. (FOR THE COUNTRY.) The bill being taken pro confesso, the order therefor can be set aside, only where the defendant shall apply for the same on the first day of the meeting of the Court, and shall have previously filed, or, on making such application, shall produce a full and explicit answer or plea, with a brief for the Court, and shall docket the cause for hearing, at such Court, and submit to any further conditions the Court may impose.—If the complainant be dissatisfied with such answer, he shall forthwith file exceptions, and if, on reference thereof, the answer shall be adjudged insufficient, the bill shall be absolutely ordered to be taken pro confesso, as to the points not satisfactorily answered, unless otherwise ordered by the Court; but in making a final decree, where a bill has been taken pro confesso, the Court will require such proofs as shall satisfy it of the justice of the complainant's demand, and the defendant may be heard touching the merits so disclosed, and may take advantage of any matter which would have been good cause of demurrer, but not of such as ought to have been presented by plea or answer.

Book of Reports.

37. The Register and Commissioners of the respective Courts, shall keep books in which they shall cause to be transcribed all reports made to the Court, as soon as the same shall be confirmed.

Cases, when cont'd on dkt.

38. No cause shall be continued on the docket for a longer time, or on other terms than those prescribed by law.

Dress.

39 Gowns and black coats shall be the habit of the bar, and no member thereof shall be permitted to address the Court, unless in such habit. [b]

20*th March* 1810.

In the Court of Appeals—Fall Term 1810.

Costs in appeal cases.

40. In all cases brought up to the Court of Appeals, costs may be directed to be paid by either the complainants or defendants, [c] as the Court shall see fit, notwithstanding the decree or order of the Circuit Judge respecting them, should not be made a ground of appeal.

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a. Southern S. P. Company v. Roger, Cheves, Ch. R. 53.

b. See various rules and regulations for the proceedings in the Court of Equity, in different acts of the Legislature, respecting that Court; and particularly the 12th, 13th, 14th, 15th, 16th and 17th sections of the act of December 1802.

c. The rule of the Court of Chancery, as to supplementary bills, and bills in nature of bills of review, made by Lord Chancellor Hardwicke, is to be found in 2d vol. of Atkins, p. 139, in a note:—"The 17th of October 1741, Lord Hardwicke made the following order: That no supplemental or new bill, in nature of a bill of review, grounded upon any new matter discovered, or pretended to be discovered, since the pronouncing of any decree of this Court, in order to the reversing or varying of such decree, shall be exhibited without the special leave of the Court first obtained for that purpose; and unless the party, exhibiting the same, do first deposit with the Register of this Court, so much money, as together with the deposit, by the rules of this Court to be made, on obtaining a re-hearing of the cause wherein such decree was pronounced, will make up the sum of fifty pounds, as a pledge to answer such costs and damages as shall be awarded to the adverse party, in case the Court shall think fit to award any, at the hearing of the cause on such supplemental or new bill."

Master and Commission'rs to report to the Court.

41. Ordered, that the Master and the Commissioners in the Equity Circuit Courts of this State, shall at the first sitting of their respective Courts, in every year, severally make report to the Court, of the different estates in their hands, severally, under and by virtue of any decree or order of the Court, with a full and particular account of the monies received and paid, relating to said estates: " And the said Masters and Commissioners, shall also, at the time above-mentioned, severally report what executors, administrators, guardians, or trustees, have been ordered by any decree of the Court, to account annually, before them respectively, and which of them have complied therewith: and it shall be the duty of the said Master and Commissioner, respectively, to take out rules against those who may be in default, so as to enforce the due execution of the orders and decrees of the Court on that subject.

April 23d, 1811.

Order made whilst defendant is absent from the State, how dissolved.

42. When the defendent is out of the limits of the State, and an order is taken out for him to plead, answer, or demur, or that the bill be taken pro confesso, the defendant appearing in person, or by his attorney, before the expiration of the time, contained in the said order, shall be at liberty to move at Chambers, before any one of the judges, and giving four days notice thereof, to the complainant, or his attorney, for a dissolution of the said order.

HENRY WM. DESAUSSURE,
THEODORE GAILLARD,
THOMAS WATIES,
WILLIAM D. JAMES,
WADDY THOMPSON.

March 26th, 1814.

March 18, 1816.

Cause to be set down for hearing.

43. It is ordered, That in all cases, it shall be held to be incumbent on the complainant's solicitor, to set down the cause for hearing, and make out and serve briefs, preparatory for trial, according to the rules. Upon failure to do so, the Court may strike the cause off the docket.

Columbia, December 1817.

Docketing of Injunction cases.

44. It is ordered, That in all cases, where injunctions shall be obtained to stay proceedings at law, the Registers or Commissioners in the several Circuit Courts, in Equity, shall on the coming in of the answers, place such causes at the head of the docket, for priority of hearing, at the ensuing Court. And if the Complainants should not be ready to try their several causes on the merits, the defendants in such causes, may severally move for the dissolution of the injunction at the first Court, and the Circuit Court shall make such order thereupon, as to justice shall appertain. [b]

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a. 1840, 11 Stat. 113 § 15.
b. Rescinded by Rule 49, *post*.

Copies of decrees, &c., for publication.

45. It is ordered, That the Commissioners in the several Circuit Courts, shall transmit annually to the Commissioner in Columbia, certified copies of all decrees, pronounced in their Courts, upon which appeals have been made, together with such of the documents as may be necessary to elucidate the same. And, it shall be the duty of the Commissioner at Columbia, to transmit such of the said decrees with the decrees of the Court of Appeals thereon, as may be selected by the said Court for publication, together with the reports of the cases, once a year, to the State Printer, conformably to the Act of the Legislature.

Register's fees.

46. It is ordered, That the Registers and Commissioners shall be at liberty to require the payment of the fees allowed by law, for the services they shall render, and for each service, at the time the same shall be rendered, in all unlitigated cases.

HENRY WM. DESAUSSURE,
THEODORE GAILLARD,
THOMAS WATIES,
W. D. JAMES.

Columbia, December 12*th* 1818.

Position on docket of certain cases.

47. All causes standing for argument, on plea or demurrer, in the Circuit Court, shall be placed on the docket next to the injunction cases, so as to give them priority of hearing to cases in which the defendants have answered. [a]

Certified copy of Decree to be filed on appeal.

48. On docketing an appeal in the Court of Appeals, the solicitor bringing up the same, shall file with the Register or Commissioner, a certified copy of the decree of the Circuit Court: and no appeal shall be docketed until the said copy is filed, without the leave of the Court.

March 1820.

Cases to be called in their order without preference.

49. It is ordered, That the rule entered into on the seventeenth day of December 1817, is hereby rescinded, and that in future, the Judge holding the Circuit Court for Charleston Equity Circuit, shall proceed to call the docket regularly, without giving preference to the injunction causes, or cases on plea or demurrer, beginning where the preceding Judge left off. [b]

HENRY WM. DESAUSSURE,
THEODORE GAILLARD,
WM. D. JAMES,
THOMAS WATIES.

Columbia, May 4*th*, 1824.

Concerning Counsel.

50. Not more than two counsel shall be heard on each side, in any cause argued in the Court of Appeals.

HENRY WM. DESAUSSURE,
THEODORE GAILLARD,
THOMAS WATIES,
W. THOMPSON,
WM. D. JAMES.

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a. See Rule 49, *post.*
b. See Rules 44 and 47, *ante.*

Saturday, 27th April 1833.

Present—Justices Johnson and O'Neall, and Earle, J., sitting for Judge Harper.

The Court proceeded to read and adopt the following rules.

In Appeal Court, no case docketed unless certified copy of decree be delivered.

51. The Clerk of the Court of Appeals shall not hereafter docket any cause, until a copy of the decree of the Chancellor, or the original report of the Presiding Judge, shall be delivered to him. It shall be the duty of the Clerk, to furnish copies of said decree, or reports, to any party in the appeal, and charge the party or parties applying for the same, with the costs for copying. [a]

Copies and not originals to be produced.

52. The Register of the Court of Equity, who is the Clerk of the Court of Appeals in Charleston, shall not be required to produce any original paper, but the party desiring the same shall obtain copies; the originals will not be allowed to be brought into Court.

March 2d, 1835.

Present—Judges Johnson, O'Neall, and Harper.

The Court proceeded to read and adopt the following additional rule.

Counsel appealing to furnish statem'nt, &c.

53. No case in Equity will be hereafter heard, unless the counsel appealing, (if the decree does not contain a statement of the cause,) furnish a clear and intelligible statement of the facts and questions of law upon which he demands the judgment of the Court; all papers relied upon must be copied in the brief, and none not so copied, save the decree, the Master or Commissioner's report and exceptions, will be allowed to be read. [b]

Columbia, May 1842.

Course of Study.

54. Applicants for admission to practise in the Court of Equity, will hereafter be required to stand an examination upon the following books, viz:

Fonblanque's Equity.
Mitford's Pleadings.
Story's Equity.
Story's Equity Pleadings.
Harrison's Chancery.
Acts of Assembly, as to the organization and practice of the Court of Equity.

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a. See Rule 43, *ante*.

b. See Rules 6, 7, 8, 9, 12, and 13, of the Court of Appeals, adopted January 1836, *ante* pages 30 and 31.

Rules of the Court of Errors,

ADOPTED, COLUMBIA, MAY 1845, [a]

1. In no case whatever, will an appeal lie directly from any Circuit Court of Law or Equity, to all the Judges assembled as a Court of Errors.

2. No cause shall be placed on the docket of the Court of Errors, unless by the order of the Appeal Court in which the cause was heard or opened.

3. No application will be entertained by either Court, by petition or otherwise, nor will argument be heard on any motion for sending a cause to the Court of Errors, after judgment rendered.

4. In every case, the Court requiring the assembling of a Court of Errors, shall, so far as practicable, unless all questions and matters involved in the cause be referred to the said Court, specify the particular questions and points of law on which it may desire the judgment of that Court.

JOHNSON, HARPER, JOHNSTON and DUNKIN, C C.
O'NEALL, EVANS, BUTLER, WARDLAW and FROST, J J.
RICHARDSON, J., absent.

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a. Pell vs. Ball, 1 Rich. Eq. Rep. 426; 1836, 7 Stat. 340 § 7, § 8. The words of the Act are,

§ 7, "That upon all constitutional questions arising out of the Constitution of this State, or the United States, an appeal shall lie to the whole of the Judges assembled to hear such appeals: that an appeal shall also lie to the whole of the Judges upon all questions upon which either of the Courts of Appeal shall be divided, or when any two of the Judges of the Court shall require that a cause be further heard by all the Judges."

§ 8. "That the Judges of Law and Equity, when assembled as aforesaid, in one Chamber, shall form a Court for the correction of all errors in Law or Equity, in the cases that may be heard before them; and that it shall be the duty of the Judges to make all proper rules and regulations for the practice of the said Court of Errors, and for the mode of bringing causes before them."

Rules of the City Court of Charleston,

ADOPTED MAY 27TH, 1844, BY THE CITY COUNCIL AND RECORDER. [a]

The insertion of these Rules at large, is deemed unnecessary, as they are almost identical with the Rules of the Court of Common Pleas and General Sessions, adopted in 1837.[b] The latter Rules, taken in connexion with the alterations, additions, &c., hereinafter mentioned, will furnish the entire Rules of the City Court.

ALTERATIONS.

For "Court-house," in Rule 1st, read "City Hall."

For the word "Judge," wherever it occurs, read "Recorder."

Instead of the 13th and 14th Rules, this Rule has been adopted:

"The dress of the gentlemen of the Bar, Clerk and City Sheriff, shall be black coats; and no gentleman of the Bar shall be heard, if otherwise habited: and it shall be the duty of the Sheriff to attend to the execution of this Rule. The Recorder shall wear a black silk robe." Dress.

Instead of the 26th Rule, this Rule has been adopted:

"The dockets shall shew, in separate columns, the number of cases, causes of action, number of terms, plaintiff's attorney, (and in the sessions, prosecutor's name and subject of indictment,) the order of the last Court, and place for the event of suit to be entered by the Recorder." Arrangement of Docket.

Instead of the 44th Rule, this Rule has been adopted:

"All City Sheriffs' sales of lands, houses and negroes, shall be made at the Court-house of Charleston District, or at the Exchange in Charleston; and household furniture, and other personal effects, shall be sold at the discretion of the Sheriff, either at the place where seized, or at the nearest convenient public place thereto; which place shall always be mentioned in the Sheriffs' advertisement. Sheriffs' sales.

The 39th and 40th Rules, relating to commissions, [c] are still of force. Commissions.

Instead of the 58th and 59th Rules, this Rule has been adopted:

"The City Sheriff shall always have in attendance, as many Constables as the law requires. Those who shall absent themselves from Court without leave, shall be proceeded against, and fined in the manner prescribed in relation to jurors, unless the Court think fit to proceed more summarily against them." Constables.

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a. 1801, 7 Stat. 303 § 10.
b. *Ante*, page 33 to 46.
c. 1836, 7 Stat. 333 § 4.

Instead of the 87th Rule, this Rule has been adopted :

Rules of C. C. P. of Westminster, and A. A. 1839.

"All cases not provided for in any of the foregoing Rules, shall be governed by the practice of the Court of Common Pleas at Westminster, so far as they are consistent with the laws of this State ; and by the Acts of Assembly of the year 1839, concerning the office of Clerk and Sheriff, so far as they may be applicable to the proceedings and jurisdiction of the City Court."

ADDITIONS.

Under the head of "Docket," page 36, *ante*

City Docket.

"A separate docket shall be kept for the cases in which the City is prosecutor, to recover penalties for violation of the City Ordinances."

Docket of Magistrates' cases

"A separate docket shall be kept by the Clerk, for cases of appeal from the decrees of Magistrates, [a] and no such appeal shall be entered after the second Monday of the term, nor shall any appeal from the decree of a Magistrate be docketed, unless it be accompanied with the appeal bond required by the Act of Assembly."

Contingent Docket.

"A contingent docket shall be kept by the Clerk, which shall contain all the rules, scire facias, bills found, in which defendants have not been arrested."

Order of call of Dockets.

"The several dockets shall be regularly called in the following order : 1st. The Sessions Docket. 2d. The City Docket. 3d. The Writ of Inquiry Docket. 4th. The Issue Docket. The Process Docket shall be called on the first Saturday of the term, and if not finished, at such other time as the Recorder shall direct. The Contingent Docket shall be called on the last Saturday of the term."

OMISSIONS.

The 16th Rule, relating to renunciations, has been omitted.

Also, the 22d Rule, relating to the docketing of certain cases.

Also, the latter part of the 37th Rule, viz : "And if he neglect to comply," &c.

Also, the 45th, 46th, 47th and 48th Rules, relating to surveys.

Also, the 51st Rule, relating to exemplifications.

Also, the 52d Rule, requiring the Clerk and Sheriff to produce Rules.

Also, the 56th and 57th Rules, relating to counsel.

Also, the latter part of the 61st Rule, viz : "Nor shall any paper be filed," &c.

Also, the 71st Rule, relating to issues from Equity.

Also, the 72d Rule, relating to suits for land.

Also, the 73d Rule, relating to costs in new trials.

Also, the 75th Rule, relating to actions on Sheriffs' bonds.

Also, the 79th, 80th, 81st, 82d, 83d, 84th, 85th, and 86th Rules, relating to appeals.

And also, the 88th Rule, repealing clause.

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a. 1818, 7 Stat. 320 § 6.

RULES AND ORDERS

IN THE

Federal Court for the District of S. Carolina.

ADOPTED IN 1790; SINCE SUPERSEDED.

Columbia, 12*th May* 1790.

Ordered, That it be requisite to the admission of practitioners in this Court, that they should have been admitted attornies of the Court of Common Pleas of this State for two years.

JOHN RUTLEDGE,
JAMES IREDELL.

Columbia 13*th May* 1790.

Ordered, That any two Judges of the Court may, in the vacation, admit persons to practise as attornies and solicitors of this Court, who have the qualifications required by the order of yesterday.

Ordered, That writs be returnable on the first day of each term.

Ordered, That defendants be entitled to an imparlance, on filing special bail, where it is ordered.

Ordered, That the mode of proceeding in causes at common law, be conformable to the practice of the Court of Common Pleas of this State.

Ordered, That the proceeding in causes of Equity be conformable to the practice of the Court of Chancery of this State.

RULES

IN THE

Federal Court for the District of S. Carolina,

ADOPTED MAY 10, 1813: NOW OF FORCE.

For the orderly conducting of business in the District Court of South-Carolina, as well on its *Instance side*, in cases of Common Law, as on its *Admiralty Side*, in cases of Maritime Jurisdiction: It is ordered by the said Court, that the following Rules be observed,

ON ITS INSTANCE SIDE.

1. That the Marshal *do return* all writs and other processes, on the first day of the term: and that they be returnable on that day accordingly.

2. That defendants be entitled to an imparlance on filing special bail, when required.

3. That Juries *be drawn and Venires issue*, on the first day of each term, for the succeeding Court, should the business of that day permit, if not, on any other day during the term, by permission of the Court.

4. That writs of *Venire facias* issue from the Clerk's office; and be served and returned by the Marshal, in his proper person; or by his Deputy; or in case the Marshal, or his Deputy, be not an indifferent person, or be interested in the event of any cause, then they are to be served and returned by such fit person, or persons, as the Court shall specially appoint for that purpose; agreeably to the tenor and construction of the 27th, 28th, and 29th sections of the Judiciary Act.

5. In future, all persons who have been admitted attornies of the Court of Common Pleas of this State, and have practised therein, during the term of one year; or who have been admitted into the Circuit Court of this district, and whose private and professional character appear fair, may, on petition in writing, *duly presented in this Court*, stating such admission and practice, be admitted to practice therein.

6. That the service of writs, and other processes, issued from this Court, be proved before the Clerk any time in vacation.

7. The Clerk of this Court, in the absence of the Judge, on good and sufficient cause being shewn, may make the necessary orders for holding to bail, on suits instituted in this Court.

8. The Marshal of this Court shall give due notice in one of the gazettes of this City, to the jurors and others concerned, of the time and place of the meeting of this Court; and should it be adjourned to any future day, or days, before the commencement of the next regular term, it shall also be his duty to give such due notice of the same.

And the charges incidental thereto, are to be defrayed out of the fines inflicted upon defaulters, or from any other monies from whence the same may be lawfully discharged.

9, The names of the defaulting Jurors shall be hereafter notified by the Clerk, in one of the gazettes of this City, three weeks immediately preceding the sitting of the Court, then next succeeding; and upon neglect to answer the said notice satisfactorily, or on not giving a sufficient excuse, on oath, the said defaulters shall be fined by the Court.

10. Pleas, replications, and all subsequent pleadings shall be filed within ten days after service of the rule on the party to file such plea, or on his attorney; in default whereof, the plaintiff's attorney shall be at liberty to take his order for judgment; or the defendant's attorney his judgment of *non pros.*

11. On all declarations filed, a ten day rule to plead shall issue.

12. The Marshal shall pay over to the District Attorney, or other proper officer, all monies received by him, under executions, at the suit of the United States, immediately on the receipt thereof.

13. All rules against the Marshal, to pay over monies, in his hands, shall be returnable in four days; or for a longer or shorter time in particular cases, upon cause shewn.

14. On motion made for any special order of Court, the order proposed shall be submitted to the Court, in writing, by the counsel or party making it; and if granted by the Court, it shall be delivered to the Clerk for insertion in the Journals.

15. No practising attorney shall be received as special bail for any person; nor as security for any officer of this Court.

16. In all cases wherein no particular rules are herein before set down, the practice of the Court of Common Pleas, of South-Carolina, shall be pursued; so far as the same be not repugnant or contrary to these rules, or the laws of the United States.

17. In all cases where the Plaintiff sues out a Writ of Error, he shall enter into a bond, with security, in a sum not exceeding three hundred dollars; and in all cases where the defendant shall sue out a Writ of Error, he shall also enter into a bond in a sum not exceeding three hundred dollars, and ten per cent. on the amount demanded, to cover such damages as the Court may impose for delay.

18. When commissions to examine witnesses respecting pensions, are required, application shall be made to the Clerk of the Court; upon which he shall deliver one to the party applying, he or they paying the proper fee to him, for so doing, if required.

19. All Rules and Orders heretofore made for regulating the practice of this Court, shall be, and they are hereby repealed.

JOHN DRAYTON,
Judge of the District Court of South-Carolina.

RULES

IN THE

U. States Circuit Court of South-Carolina,

IN CASES OF COMMON LAW: NOW OF FORCE.

PROCESS.

1. Rules shall be held monthly in the Clerk's office, on the first Monday in every month, for the purpose of entering all proceedings and orders which may be entered at the Rules; and not necessary to be taken or made in open Court. The rules shall be held under the direction of the Clerk; but either of the Judges of the Court may make or allow any special order in any cause not inconsistent with the regulations herein prescribed, which shall be entered in the Rule Book, and take effect accordingly.

2. All process shall be made returnable to the next succeeding term, or to any intermediate Rule day, at the election of the party suing out the process, and the return of such process executed, shall be effectual, whereon to ground any subsequent proceedings.

3. Where any person, plaintiff or defendant in any suit, shall be dead, it shall be lawful for the Clerk at Rules, upon application and suggestion of the death, to issue process to bring into Court the executors or administrators of such deceased person, to be substituted for the deceased party; and he may also, on motion of the executors or administrators of a deceased party, permit them to enter themselves as parties, and to proceed in such suit.

4. On process returnable to Rules or otherwise, the Marshal shall be allowed time for serving the same at the rate of ten miles per diem, counting from Charleston, and from the date of entry in his office; and if he cannot with due diligence return such process to the Rules or Court, to which it is made returnable, he may return it to the next Rules. A copy left at the defendant's usual place of residence shall be a sufficient service.

5. Whenever a writ shall be returned, the declaration may be filed immediately after the return; and whenever filed on a Rule day, the defendant shall be bound to take notice, and plead accordingly, without a rule to plead. In all other cases a rule to plead shall be specially taken out and served upon him or his attorney. If a declaration shall not be filed within six rules after return of the writ served, it shall not afterwards be filed without leave of Court.

6. A defendant shall be allowed time to file his plea to an action at the rate of five miles per diem, for the distance of his residence from

the Court-house in Charleston, counting from the Rule day on which the declaration shall be filed, when filed on a Rule day; and counting from the day of the service of the rule to plead, when filed on any other day. But where the general issue is tendered, and nothing but a "similiter" wanted to make up the issue, a special order may be taken for the other party to reply instanter. And the same time shall be allowed the parties to a suit as to all subsequent pleadings, counting always from the Rules at which, or next before which the plea to be answered, was filed. But in all cases except that of the similiter, time until the next Rules shall be allowed, and the additional time at the rate aforesaid, whenever the distance of the party's residence entitles him to more, in which last case, the time to the Rules shall be counted as part.

7. Whenever a party fails to comply with the 6th Rule, an order for judgment, or of non pros, may be entered at the Rules;[a] but the same may be set aside at the next Rules, on motion, payment of costs, and pleading instanter, or for special cause shewn, on motion made within the two first days of the next term; in which latter case the Court will impose such other reasonable terms as the ends of justice may require.

8. A copy of every open account, and of every bond, deed, or other writing declared on, shall be filed with the Clerk at the time of filing the declaration; and the defendant may have oyer of the original bond, deed, or other writing, before he shall be required to file his plea, provided notice of a demand of oyer be served on the plaintiff's attorney ten days before the day on which the defendant is bound to plead to the action.

9. If any frivolous or deceitful plea be filed, the adverse party shall not be obliged to demur to the same; but the Clerk may give an order for judgment or non pros, at the Rules, and the party against whom it is given shall be held to his motion to set aside such order at the next term, as under the seventh Rule.

10. No plea of *plene administravit* shall be received and filed, unless accompanied with an office copy of the inventory and appraisement of the estate; and the defendant tendering such plea shall be bound on ten days' notice in writing, to deposit with the Clerk a full account of his administration upon oath, or the book or books containing the same.

11. Whenever any gentleman of the bar shall leave with the Clerk instructions how to direct to him by mail, and a request to have the benefit of this rule, it shall be the duty of the Clerk, within ten days after the Rules, to forward to such gentleman an abstract of all the rules, orders and entries made on each Rule day, for which the Clerk shall be entitled to demand one dollar each month.

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a. Extract from Circuit Court Journal page 389, April 10th 1833.

Present—His Honor WILLIAM JOHNSON.

Redmond vs. Hertz. On motion by plaintiff's attorney, for an order for judgment, the defendant not having plead, under a rule returnable the first day of the present term. The Court after hearing argument, refused the motion, as under the existing rules, orders for judgment are *only* given by the Clerk and on Rule days.

JUDGMENTS.

12. All judgments obtained at the same term, and entered up agreeably to the next rule, shall be of the same rank as to precedence. The same shall be regularly docketed, as heretofore, in a book kept for the purpose, having successive columns, exhibiting at one view the date, the time, and nature of the executions sued out, the returns upon the same, and the date of satisfaction, with a column for miscellaneous occurrences.

13. Judgments, to retain their rank or precedence under the preceding rule, shall be entered up within five days after the party is entitled to the same; but may be entered at any time before the second term after, to take precedence from date. If not entered before the said second term, they shall not be entered without a motion at Rules, or in open Court; and then not until the Rules next after such motion.

14. In all cases where judgment shall be signed for a penalty, satisfaction shall be entered on payment of principal, interest, and costs; and where the condition is for the performance of something other than the payment of money, the Court will order a writ of inquiry upon the condition to determine the real amount due.

15. If a motion in arrest of judgment, or for a new trial, be intended to be made, the party shall give notice thereof, and of his grounds, within two days after verdict. No motion in arrest of judgment shall be heard after a new trial once had; but the motion in arrest of judgment and for a new trial may, in the first instance, be made simultaneously.

16. If an order for judgment be taken by default, or judgment be given for plaintiff, on demurrer, the Court, on motion of plaintiff, will assess the damages, if the action be on single bill, promissory note, bill of exchange, or any written contract, or in all such cases the petit jury, attending the Court, may assess the damages, as in case of writ of inquiry at common law. The plaintiff in such case shall produce the writing on which the action is founded, but the execution shall be considered as established.

17. To prevent fraud in entering up judgment on warrant of attorney, no such judgment shall be signed unless accompanied with an affidavit of the debt specifying the amount actually due, and a legal verification of the letter of attorney. And if the warrant be of a date twelve months or more anterior, the affiant shall further swear to his belief that the defendant is still living.

18. If a plaintiff take an order for judgment, the defendant may, notwithstanding file his plea, and take the steps necessary to have an issue made up if he means to move to set the order aside. The plaintiff in such case shall be bound to reply and await the contingency of having the order of judgment set aside, in order that there may be no delay in the event of setting aside such order for judgment.

19. Whenever the existence of unsatisfied judgments or mortgages, impedes the payment over of moneys levied, and in the Court, or in the hands of the Marshal, it shall be sufficient to advertise in some one respectable gazette, for one month, a notice to the parties interested in such judgments, to come forward and satisfy the Court that such judgments are actually subsisting unsatisfied judgments. If the parties in

interest fail to do this, the Court may order the money to be paid over to the executions in the Marshal's hands.

20. Whenever judgment for the recovery of money shall be signed, if the defendant or his attorney will indorse upon the record his consent that the same shall bear interest, the execution may afterwards issue at any time for the amount of the principal and interest calculated to the return day of such execution.

EXECUTIONS.

21. No execution shall issue until the Rules next after the sitting of the Court at which the judgment was obtained.

22. The Marshal shall return every execution to the Clerk, with a special note indorsed, exhibiting what has been done under each execution, which execution and return shall be filed and preserved in the record; and no new execution shall be signed until that previously issued has been duly returned, except by special order of a judge.

DOCKETS.

23. No cause shall be docketed until the issue is made up, except where nothing is wanting but a similiter, or joinder in demurrer, in which cases, the Court will, on motion, at any time during the term, order the necessary entry to be made by the Clerk.

24. The docket shall be finally made up on the second day of the term, and all causes duly docketed shall be called for trial in their order without notice of trial. Every cause called at four several terms, and not proceeded in, shall be omitted from the next docket, not to be restored but by order of Court, on cause shewn; provided the same has not been continued at defendant's motion.

25. Causes to which dilatory pleas or demurrers have been filed, shall be placed on a separate part of the docket, and shall have an early call.

26. Causes marked on the docket settled, discontinued, or otherwise terminated, shall not again be docketed, without leave of Court, or consent of both parties in writing.

27. At the opening of the Court, on the first day of the term, the Court will proceed to call over the docketed causes for trial, in their order, beginning with the issues, and will call the docket but once.

28. Either party may docket a cause entitled to be docketed, and the parties to every cause duly docketed, may be compelled to trial, without any further notice.

CONTINUANCES.

29. Motions for continuance on the ground of absence of a witness or the non-return of a commission, shall be accompanied with an affidavit, stating what the party expects to prove by the witness or commission, and that he is not able to prove the same by any other means. The affidavit shall also shew that due diligence has been used to procure the same, by stating the steps that had been taken, or the causes why the ordinary measures have not been pursued, to the end that the Court may be satisfied, that the party making such motion does not affect delay.

WRITS OF INQUIRY.

30. A docket shall also be made of causes in which writs of inquiry are to be executed, and no writ of inquiry shall be executed in a cause not docketed.

31. If it be in any way known to the plaintiff's attorney, that the defendant has an attorney attending on his cause, no writ of inquiry shall be excuted without reasonable notice given to such attorney.

JURIES.

32. To all writs of venire, the Marshal or his deputy shall make a return on oath to the Clerk, exhibiting in three several columns those jurors on whom a summons has been served personally, those who have been summoned by copies or notices left at their houses, and those who could not be found.

33. The Clerk shall keep a book in which shall be entered the names of all persons who have been summoned as jurors, or bound in recognizances, and have made default; and shall enter opposite to the name of each defaulter, whether he be fined or excused; if fined, the amount of the fine, and if excused, by whom excused; which book shall be exhibited to the Court at every sitting.

34. The Marshal, or his deputy, shall serve a written or printed summons on each juror, expressing the day, hour and Court at which he is to appear, and also whether he is to serve as a Common Pleas and Petit, or as a Grand Juror.

35. Within ten days after the adjournment of each Court, the Clerk shall publish in some one public print, the names of the defaulting jurors summoned to attend that term, with a notice, that on the first day of the ensuing term they will be fined according to law, unless they make sufficient excuse on oath; which publication shall be continued for three weeks, and shall be a sufficient notice to such defaulters.

36. After drawing every jury, the Clerk shall fold up the names of the jurors so drawn, seal the envelope, and indorse the seal with his name, with the date of such drawing, and the Court and jury for which they were drawn; which paper shall remain sealed until the whole list be drawn throughout.

37. The jurors shall be summoned from the persons legally qualified under the State laws, resident within the parishes of St. Philip, St, Michael, Christ Church, St. Thomas, and St. Andrew, for Charleston; and Richland district, for Columbia.

38. When a jury cannot be had from the persons so summoned, the Court will summon a jury *de talibus circumstantibus*.

39. Jurors who have made default, may make oath to their excuse before any State Magistrate, and file the same with the Clerk on or before the first day of the ensuing term. If the excuse be deemed insufficient, the same penalties shall be inflicted as are inflicted by the State laws, or they may be moderated by the Court, according to circumstances. The mode of collecting fines so inflicted, shall be by attachment as for contempt.

40. Persons above sixty years of age, shall be excused from serving on juries: other excuses must depend upon their particular merits.

FORECLOSING MORTGAGES.

41. In suits on bonds, or other contracts, secured by mortgage, the plaintiff may enter his judgment and have his execution, as in ordinary cases; but if he proposes to have the mortgage foreclosed according to the State laws, in such case, he shall, at any time pending the suit, or after judgment, file a suggestion, stating the time when, the parties by and to whom the conditions upon which such mortgage was made, together with a description of the mortgaged property, and all such other particulars as may be necessary to bring all the circumstances of the case before the Court, after filing which he shall serve on the defendant, or his attorney, a ten day rule, to shew cause why such mortgaged property should not be sold, and unless cause be shewn, an order of sale shall pass accordingly.

42. Orders of sale of mortgaged property to effect a foreclosure, shall be to the following effect: "That if the defendant shall not within after this date, pay to the plaintiff the full amount of principal, interest, and costs, due by him on that day, the Marshal shall proceed to sell the premises on a credit of months; the titles to be signed, but not delivered until the money be paid according to the terms of sale; and if the amount of the purchase money be not paid when due, the Marshal shall re-sell for cash, and on account and risk of the former purchaser."

MARSHAL'S SALES.

43. Sales of lands and negroes shall take place at the Court-house of the district in which the levy is made. Sales of all other kinds of property shall take place on the premises where the levy is made; but such sales may be made elsewhere by consent of parties.

44. Sales of lands and negroes by the Marshal, under execution, shall take place on the first Wednesday in every month, and after advertising three weeks in any public print of respectable circulation nearest the place of levy. The property to be sold shall be sufficiently described, and the parties, plaintiff and defendant, distinctly named.

SURVEYS.

45. Surveys of land in any quantity not exceeding two hundred acres, shall be laid down by a scale of ten chains to an inch; if exceeding that quantity, by a scale of twenty chains to an inch.

46. No survey made under a rule of Court shall be received in evidence, unless it appear that at least fifteen days' notice of the time and place of commencing such survey, was given to the opposite party by or in behalf of the party who offers it in evidence.

47. Every surveyor shall represent on his plat, as nearly as he can, the different enclosures of the tenants, and the extent or boundaries within which each party has exercised acts of ownership, by cultivation or otherwise.

48. All objections to the regularity or admission of surveys must be made before the jury is charged with the cause.

MOTION FOR NEW TRIAL, IN ARREST OF JUDGMENT.

49. In cases in which a party shall receive notice of a motion for a new trial, or in arrest of judgment, he shall have leave notwithstanding to enter up his judgment and lodge his execution to bind property; but if the motion be sustained, the judgment and execution shall be wholly set aside. If either party shall die before a decision be had in the cause on such motion, his legal representative may enter himself party to the suit on motion, and be entitled to all the rights of the original party.

FINES AND FORFEITURES.

50. The Clerk shall keep a regular debit and credit account of all fines and forfeitures imposed, and money recovered on recognizances, which account shall be exhibited with his list of defaulters, and shall be annually attested.

COMMISSIONS TO EXAMINE WITNESSES.

51. Commissions for examining witnesses may be forwarded by mail, and when executed may be returned in the same mode; provided that in the latter case, the Commissioner who deposits it in the Post-office, certify the same on the envelope over the seal, and if deposited by a messenger, that the Commissioner certify the delivery to the messenger, and the messenger certify the delivery to the office. And if it should pass through any number of hands, successively, the same to be done by each, noting every stage of its progress, until delivered into the office.

52. The time to be allowed for the return of a commission from any part of the United States, if not exceeding one hundred miles distant, shall be one month; if at a greater distance, not exceeding five hundred miles, two months; if at any greater distance, three months. If from any part of the West-India Islands, three months. If from any part of Europe, six months. If from any other quarter of the globe, it must be judged of specially by the Court.

53. When a commission is returned, it may be opened by leave of the Clerk, upon consent of both parties in writing, indorsed on the commission; and after the return of a commission, it shall be the property of both parties, and remain with the Clerk to be used by either.

54. Either party to a cause at issue, or ordered for judgment, wishing to sue out a commission to examine witnesses, shall first file a copy of the interrogatories to be propounded to the witnesses, and shall give ten days' notice thereof, accompanied with a copy of such interrogatories to the opposite party, or his attorney; and each party may name any number of Commissioners, not exceeding five, any two of whom shall be competent to examine the witnesses, or any one of them; and the cross interrogatories and Commissioners in behalf of the opposite parties, shall be rendered within ten days after such notice. But on application to either of the Judges, or on motion at Rules, commissions may be sued out by plaintiff, at any time after filing his declaration, or by the defendant, at any time after filing his plea, though no issue be made up, and although the ten days' notice be not given, provided the

same be necessary for the purposes of justice, and will expose the opposite party to no risk.

PLEAS.

55. The defendant, with leave of the Court, may plead as many several pleas to the merits as may be necessary to his defence.

56. The defendant shall not plead specially, without the consent of the plaintiff, if by the rules of evidence, the special matter can be given in evidence on the general issue.

57. If the plaintiff amend his declaration so as substantially to change his case, or the defence, the defendant shall have the same time to plead *de novo*, as is given in the first instance.

58. The defendant shall not plead two dilatory pleas, that is, a second, after the first has been disposed of.

59. If the defendant in debt shall plead *non est factum*, or *non assumpsit*, on a bill of exchange or promissory note, without an affidavit to the truth of his plea, the instrument declared on, shall be produced by the plaintiff, but need not be proved. The execution thereof shall be considered as admitted. An executor or administrator, in such cases, may make affidavit to his belief.

60. A plaintiff may have leave to strike out an issue in fact, for the purpose of filing a general demurrer, on payment of costs, and submission to such terms as will prevent delay.

61. Neither party shall, after pleading, demand the letter of attorney of the opposite party.

BAIL.

62. Bail may be required in any suit sounding in contract, provided an affidavit of the sum actually due be attached to the writ, and an order indorsed thereon, requiring bail to be taken. In all special cases the order of a judge shall be obtained.

63. The obligation entered into by bail, in a civil suit, shall be to surrender the principal, if in life, at any time before the bail shall become legally fixed, or made personally liable for the sum sued for in the original action.

64. Bail in civil suits shall become liable to pay the sum recovered in the original action, upon the return of *non est inventus* to a *ca. sa.* or *nulla bona* to a *fi. fa.* against the principal. And although bail has become fixed, he may have the privilege of surrendering his principal in discharge, at any time before judgment against himself, on payment of costs and expenses.

65. A plaintiff shall not be at liberty to discontinue against the principal, and proceed against the bail, but shall proceed to judgment and execution against the principal, and may have his election to bring an action on the bail bond, or issue a *scire facias* against the bail, upon the judgment against the principal, and obtain judgment thereon against the bail.

66. Bail to the Sheriff need not enter into a recognizance of special bail, but may, of right, surrender his principal to the Sheriff, in office hours, or in open Court. And he shall also be entitled to the aid of the Marshal to retake the principal, upon a written demand to that

effect, left at the Marshal's office, and advancing a reasonable sum to defray all incidental expenses. He shall be entitled generally to all the privileges, rights, and powers, which may be acquired by entering into a recognizance of special bail.

67. It shall be in the power of the plaintiff, whenever he has a legal right to require bail, to direct the Marshal to make such bail justify before the Clerk at Rules, or before some State magistrate, and the proceedings attending such justification shall be duly returned with the writ.

AWARDS.

68. Upon the return of an award, or umpirage, under a rule of reference, a two day rule shall be served by either party upon the other, to shew cause why it should not be confirmed by the Court, and judgment entered thereon. If no sufficient cause be shewn, the judgment shall be entered, and execution had, as in ordinary cases.

PRISONERS.

69. Prisoners shall be confined at one of the places where the Court is held. If a debtor, he may make his election; if a criminal, the Marshal may exercise his own discretion.

70. Whenever a defendant shall be in actual confinement, under a writ of *capias ad respondendum*, the Marshal shall make return of the writ immediately, that the defendant may sue out a rule on the plaintiff to declare in ten days after service. If the declaration be not filed within ten days, or at the next Rules, the plaintiff shall be non-prossed. But the time to declare may be extended by a Judge, or at Rules, upon cause shewn. And the same means of terminating the suit may be pursued at every subsequent stage of the pleadings.

MISCELLANEOUS.

71. When the Court is open and sitting, no rule or order shall be granted which can be obtained of course before the Clerk, unless upon special cause shewn.

72. On all rules to shew cause, the party cited shall begin and end the argument. But in all special matters, either springing out of a cause at issue, or otherwise, the actor or party submitting a point to the Court, shall be heard last; and generally the actor shall open and conclude the cause.

73. No attorney of this Court shall ever attempt to argue or explain a cause, after having been fully heard, and the opinion of the Court has been pronounced.

74. Every motion for a rule or order shall be submitted in writing, and shall be copied into the minutes from the writing submitted.

75. In actions of covenant, or on bonds, for the performance of covenants, the plaintiff may assign as many breaches as he pleases.

76. The Clerk shall issue subpœnas for all witnesses whose names are furnished him by the District Attorney, or the defendant, to testify in criminal prosecutions.

77. Mutual existing debts in the same right or rights to recover money on contract, express or implied, may be set off against each other, upon the defendant's filing with his plea, a notice and copy thereof; and if the jury shall find a sum or balance due the defendant, he may file his declaration instanter, and take judgment for such balance.

78. In order to avoid bringing causes by management into the Courts of the United States, by creating nominal parties distinct from the parties in interest; whenever a suit is instituted to try the right to property, real or personal, and the defendant will make oath that he suspects, and has cause to suspect, that the plaintiff has accepted a conveyance of the property from the real and actual owner, for the sole purpose of bringing a suit in this Court, when the title in fact exists in some other person not entitled to sue in this Court, the defendant shall not be required to plead to the action, until the facts so surmised, and stated in the defendant's affidavit, be denied on oath.

79. In the event of the death of the plaintiff to a suit, if no executor or administrator appear to enter himself party to the suit within twelve months after a suggestion of his death be entered of record, the suit shall finally abate. And in the event of a defendant's death, if the plaintiff sue out his summons to the executor or administrator to enter himself party, and he fail to do so within twelve months after service, the plaintiff may sign his judgment against the estate.

80. In actions against two or more defendants, who must by the rules of law be jointly sued, and all of whom would be liable to be sued in this Court; if one or more of the defendants be served with legal process, the rest of the defendants may be cited to appear, by order of a Judge of this Court, provided notice of such order, setting forth the cause thereof, be published three months in any one gazette of the State, with a citation to such defendant to appear and plead to the action on or before the Rules next after the three months have expired. And if plea be not filed accordingly, the plaintiff shall be at liberty to proceed to judgment against the defendant, who has been served with the process; and if he be one of a mercantile firm, execution may be levied both on his own property and that of the firm.

81. No writ of possession in trespass to try title shall issue without leave granted on motion in open Court.

82. The attorney on record in this Court in appeals and writs of error from the District Court, shall be allowed twenty dollars as a gross charge, and in addition thereto, fifteen cents per copy sheet of ninety words, in lieu of all other costs; the Clerk and Marshal, in such cases, shall be allowed the fees allowed by law in other cases in suits in the Common Pleas; and the fees of the Court of Admiralty, upon appeals from decisions in the Admiralty; but this shall not be considered as authorizing an additional percentage when money is paid into their hands.

83. In all cases of appeal from the District Court in Admiralty causes, the evidence must be filed with the Clerk before the appeal be docketed, and whenever the Judge's statement of the evidence is, by agreement to be received as the evidence, a consent to that effect must be indorsed thereon, before the cause be docketed in this Court.

84. In no case shall the defendant be compelled to plead or answer, until the plaintiff shall have given security for costs, if notice be given to the plaintiff's attorney, that such security will be required; except where the party sues *in forma pauperis.*

85. In no case shall the plaintiff proceed in his suit, (after writ or process served,) until he has given security (if the same shall be demanded,) for the Marshal's and Clerk's fees; and if the security offered shall not be deemed sufficient by the said officers, the plaintiff may appeal to the Court.

86. Attorneys who have been admitted into the Supreme Court, or any one of the Circuit Courts of the United States, and those who have been admitted in the State Court, and practised therein for three years, or who having been admitted to the State Courts shall be found qualified, on examination, shall be admitted to practise in this Court.

87. Only two counsel on each side shall be heard in any cause. One for the promovent shall be first heard, the two for the respondent shall follow, and one for the promovent close in argument.

88. On points of law, gentlemen of the bar shall address themselves exclusively to the Court.

89. Before the writ *de homine replegiando* do issue, an affidavit shall be filed with the Clerk, stating the plaintiff's claim to his freedom, and his right to sue in this Court; the amount of bail to be given shall be indorsed on the writ by a Judge of this Court, or by the Clerk at Rules.

90. In all causes wherein no particular rules are herein set down, the practice of the Court of Common Pleas at Westminster, shall be pursued, so far as the same be not repugnant to the above Rules, or the laws of the State.

I, HENRY Y. GRAY, Clerk of the Circuit Court of the United States, for the Sixth Circuit, South-Carolina District, do hereby certify, that the foregoing Rules are the Rules regulating the practice of the said Court, in suits at Common Law.

Given under my hand, at office, in the City of Charleston, District aforesaid, this first day of November, A. D. one thousand eight hundred and forty-two.

H. Y. GRAY, *Clerk Circuit Court.*

Extract from Circuit Court Journal p. 340, *March* 23*d* 1848.

Ordered, That all letters and other documentary evidence in any other language than English, intended to be used in any suit in this Court, shall be translated before the said suit shall be considered as ready for trial; such translation to be by consent of parties to the same, and agreed upon by them to be correct; or by sworn interpreters, ordered by either Judge of the Court at Chambers, upon application to him by either party, notice of application being given to the opposite party.

RULES OF PRACTICE

OF THE

Courts of the United States,

IN CAUSES OF

ADMIRALTY AND MARITIME JURISDICTION.

1. No mesne process shall issue from the District Court in any civil cause of Admiralty and Maritime Jurisdiction, until the libel or libels of information shall be filed in the Clerk's office, from which such process is to issue. All process shall be served by the Marshal or his deputy, or where he or they are interested, by some discreet and disinterested person appointed by the Court.

2. In suits in personam, the mesne process may be by a simple warrant of arrest of the person of the defendant, in the nature of a capias, or by a warrant of arrest of the person of the defendant with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for, or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or, by a simple monition in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information pray for, or elect.

3. In all suits in personam—where a simple warrant of arrest issues and is executed, the Marshal may take bail with sufficient sureties from the party arrested by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the Court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered there in the Court, to which the process is returnable, or in any appellate Court. And upon such bond or stipulation, summary process of execution may and shall be issued against the principal and sureties, by the Court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate Court.

4. In all suits in personam, where goods and chattels, or credits and effects are attached, under such warrant authorizing the same, the attachment may be dissolved by order of the Court to which the same warrant is returnable, upon the defendant, whose property is so attached, giving a bond or stipulation with sufficient sureties to abide by all orders, interlocutory or final, of the Court, and pay the amount awarded by the final decree rendered in the Court to which the process is returnable, or in any appellate Court; and upon such bond or stipula-

tion, summary process of execution, shall and may be issued against the principal and sureties, by the Court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal, by the appellate Court.

5. Bonds or stipulations in Admiralty suits may be given and taken in open Court, or at Chambers, or before any Commissioner of the Court, who is authorized by the Court to take affidavits of bail, and depositions in cases pending before the Court.

6. In all suits in personam, where bail is taken, the Court may, upon motion for due cause shewn, reduce the amount of the sum contained in the bond or stipulation therefor: and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the Court, to be given, upon motion, and due proof thereof.

7. In suits in personam, no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the Court upon affidavit or other proper proof shewing the propriety thereof.

8. In all suits in rem against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances, are in the possession or custody of any third person, the Court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the Marshal or other proper officer, if upon the hearing the same is required by law and justice.

9. In all cases of seizure, and in other suits and proceedings in rem, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested, and the Marshal shall thereupon arrest and take the ship, goods, or other thing, into his possession for safe custody; and shall cause public notice thereof, and of the time assigned for the return of such process, and the hearing of the cause, to be given in such newspaper within the district, as the District Court shall order, and if there is no newspaper published therein, then in such other public places in the district as the Court shall direct.

10. In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay or injury, by being detained in custody, pending the suit, the Court may, upon the application of either party, in its discretion, order the same, or so much thereof to be sold, as shall be perishable, or liable to depreciation, decay or injury, and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into Court, to abide the event of the suit: or the Court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in Court so much money as the Court shall order, or upon his giving a stipulation with the sureties in such sum as the Court shall direct, to abide by and pay the money awarded by the final decree rendered by the Court, or the appellate Court, if any appeal intervenes, as the one or the other course shall be ordered by the Court.

11. In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement to be had under the direction of the Court, upon the claimant's depositing in Court so much money as the Court shall order, or upon his giving a stipulation with sureties as aforesaid; and if the claimant shall decline any such application, then the Court may, in its discretion, upon the application of either party, upon due cause shewn, order a sale of such ship, and the proceeds thereof to be brought into Court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

12. In all suits by material men for supplies or repairs, or other necessaries for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight in rem, or against the master or the owner alone in personam. And the like proceeding in rem, shall apply to cases of domestic ships, where by the local law a lien is given to material men for supplies, repairs, or other necessaries.

13. In all suits for mariners' wages, the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or master alone, in personam.

14. In all suits for pilotage, the libellant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, in personam.

15. In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master, or the owner alone, in personam.

16. In all suits for an assault or beating on the high seas, or elsewhere, within the admiralty and maritime jurisdiction, the suit shall be in personam only.

17 In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master for moneys taken up in a foreign port for supplies or repairs, or other necessaries for the voyage, without any claim of marine interest, the libellant may proceed either in rem, or against the master, or the owner alone, in personam.

18. In all suits on bottomry bonds, properly so called, the suit shall be in rem only against the property hypothecated, or the proceeds of the property in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has substracted the property, or unless the owner has, by his own misconduct or wrong, lost or substracted the property, in which latter cases the suit may be in personam against the wrong-doer.

19. In all suits for salvage, the suit may be in rem against the property saved, or the proceeds thereof, or in personam against the party at whose request and for whose benefit the salvage service has been performed.

20. In all petitory or possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or

more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship and by a monition to the adverse party or parties to appear and make answer to the suit.

21. In all cases where the decree is for the payment of money, the libellant may, at his election, have an attachment to compel the defendant to perform the decree, or a writ of execution in the nature of a *capias* and of a *fieri facias*, commanding the Marshal or his deputy to levy the amount thereof of the goods and chattels of the defendant, and for want thereof to arrest his body, to answer the exigency of the execution. In all other cases, the decree may be enforced by an attachment to compel the defendant to perform the decree; and upon such attachment the defendant may be arrested and committed to prison until he performs the decree, or is otherwise discharged by law, or by the order of the Court.

22. All informations and libels of information upon seizures for any breach of the revenue or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land, or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States; and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and shew cause at the return day of the process why the forfeiture should not be decreed.

23. All libels in instance causes, civil or maritime, shall state the nature of the cause, as for example, that it is a cause civil and maritime, of contract, or of tort or damage, or of salvage, or of possession or otherwise, as the case may be, and if the libel be in rem, that the property is within the district: and if in personam, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegation of facts, upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of the process to enforce his rights in rem, or in personam, (as the case may require,) and for such relief and redress as the Court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

24. In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made, at any time, upon motion to the Court as of course. And new counts may be filed, and amendments in matters of substance may be made upon motion at any time before the final decree, upon such terms as the Court shall impose. And where any defect of form is set down by the defendant upon special exceptions, and is allowed, the Court may, in granting leave to amend, impose terms upon the libellant.

25. In all cases of libels in personam, the Court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation with sureties in such sum as the Court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in the process of the suit.

26. In suits in rem, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant, by whom or on whose behalf the claim is made, is the true and *bona fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath, that he is duly authorized thereto by the owner, or if the property be at the time of the arrest in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation with sureties in such sum as the Court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the Court, or upon an appeal, by the appellate Court.

27. In all libels in causes of civil and maritime jurisdiction, whether in rem or in personam, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel; and shall also answer in like manner each interrogatory propounded at the close of the libel.

28. The libellant may except to the sufficiency or fulness, or distinctness or relevancy of the answer to the articles and interrogatories in the libel; and if the Court shall adjudge the same exceptions, or any of them to be good and valid, the Court shall order the defendant forthwith, within such time as the Court shall direct, to answer the same, and may further order the defendant to pay such costs as the Court shall adjudge reasonable.

29. If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the Court, the Court shall pronounce him to be in contumacy and default, and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the Court shall proceed to hear the cause *ex parte*, and adjudge therein as to law and justice shall appertain. But the Court may, in its discretion set aside the default, and upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

30. In all cases where the defendant answers, but does not answer fully and explicitly, and distinctly, to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the Court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto,

31. The defendant may object by his answer to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offence.

32. The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation, to any interrogatories which he may at the close of his answer propound to the libellant touching any matters charged in the libel, or touching any matter of defence set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution or punishment or forfeiture, as is provided in the 31st Rule. In default of due answer by the libellant to such interrogatories, the Court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the Court, in its discretion, shall deem most fit to promote public justice.

33. Where either the libellant or the defendant is out of the country, or unable from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the Court may, in its discretion, in furtherance of the due administration of justice dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

34. If any third person shall intervene in any cause of admiralty and maritime jurisdiction in rem, for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the Court, the other party or parties in the suit may be required, by order of the Court, to make due answer; and such further proceedings shall be had, and decree rendered by the Court therein, as to law and justice shall appertain. But every such intervenor shall be required upon filing his allegations, to give a stipulation with sureties to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the Court upon the final decree, whether it is rendered in the original or appellate Court.

35. Stipulations in admiralty and maritime suits may be taken in open Court, or by the proper Judge at Chambers, or under his order, by any Commissioner of the Court, who is a standing Commissioner of the Court, and is now by law authorized to take affidavits of bail, and also depositions in civil causes pending in the Courts of the United States.

36. Exception may be taken to any libel, allegation or answer for surplusage, irrelevancy, impertinence, or scandal, and, if upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the Court, the matter shall be expunged at the cost and expense of the party in whose libel or answer the same is found.

37. In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation, as to the debts, credits or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall

refuse or neglect so to do, the Court may award compulsory process in personam against him. If he admit any debts, credits or effects, the same shall be held in his hands liable to answer the exigency of the suit.

38. In cases of mariner's wages, or bottomry, or salvage, or other proceedings in rem, where freight, or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the Court may, upon due application by petition of the party interested, require the party charged with the possession thereof to appear and shew cause, why the same should not be brought into Court to answer the exigency of the suit; and if no sufficient cause be shewn, the Court may order the same to be brought into Court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment or other compulsory process to compel obedience thereto.

39. If in any admiralty suit, the libellant shall not appear and prosecute his suit according to the course and orders of the Court, he shall be deemed in default and contumacy, and the Court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

40. The Court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a re-hearing thereof, at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the Court may direct.

41. All sales of property under any decree in admiralty, shall be made by the Marshal or his deputy, or other proper officer assigned by the Court, where the Marshal is a party in interest, in pursuance of the orders of the Court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the Court by the officer making the sale, to be disposed of by the Court according to law.

42. All moneys paid into the registry of the Court, shall be deposited in some Bank designated by the Court, and shall be so deposited in the name of the Court, and shall not be drawn out except by a check or checks signed by a Judge of the Court, and countersigned by the Clerk, stating on whose account and for whose use it is drawn, and in what suit, and out of what fund in particular it is paid. The Clerk shall keep a regular book containing a memorandum and copy of all the checks so drawn and the date thereof.

43. Any person having an interest in any proceeds in the registry of the Court, shall have a right by petition and summary proceeding to intervene *per interesse suo*, for a delivery thereof to him; and upon due notice to the adverse parties, if any, the Court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice; and if such petition or claim shall be deserted, or upon a hearing be dismissed, the Court may, in its discretion, award costs against the petitioner in favor of the adverse party.

44. In cases where the Court shall deem it expedient or necessary, for the purpose of justice, the Court may refer any matters arising in the progress of the suit, to one or more Commissioners to be appoint-

ed by the Court, to hear the parties and make report therein. And such Commissioner or Commissioners, shall have and possess all the powers in the premises, which are usually given to, or exercised by Masters in Chancery, in references to them, including the power to administer oaths to, and examine the parties and witnesses touching the premises.

45. All appeals from the District to the Circuit Court, must be made while the Court is sitting, or within such other period as shall be designated by the District Court by its general Rules, or by an order specially made in the particular suit.

46. In all cases not provided for by the foregoing Rules, the District and Circuit Courts are to regulate the practice of the said Courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

47. These Rules shall be in force in all the Circuit and District Courts of the United States, from and after the first day of September next.

It is ordered by the Court, that the foregoing Rules be, and they are adopted and promulgated as Rules for the regulation and government of the practice of the Circuit Courts and District Courts of the United States, in suits in admiralty on the instance side of the Courts. And that the Reporter of the Court do cause the same to be published in the next volume of his Reports; and that he do cause such additional copies thereof to be published, as he may deem expedient for the due information of the Bar and Bench in the respective districts and circuits.

SUPREME COURT UNITED STATES,
December Term, 1844.

RULES

OF THE

Court of Equity of the United States,

PROMULGATED BY THE SUPREME COURT OF THE UNITED STATES, JANUARY TERM, 1842: NOW OF FORCE.

PRELIMINARY REGULATIONS.

1. The Circuit Courts, as Courts of Equity, shall be deemed always open for the purpose of filing bills. answers, and other pleadings, for issuing and returing mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

2. The Clerk's office shall be open, and the Clerk shall be in attendance therein on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

3. Any Judge of the Circuit Court, as well in vacation as in term, may, at Chambers, or on the rule days, at the Clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner, and with the same effect, as the Circuit Court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and shew cause to the contrary at the next rule day thereafter, unless some other time is assigned by the Judge for the hearing.

4. All motions, rules, orders, and other proceedings, made and directed at Chambers, or on rule days at the Clerk's office, whether special or of course, shall be entered by the Clerk in an order book, to be kept at the Clerk's office on the day when they are made and directed —which book shall be open at all office hours, to the free inspection of the parties in any suit in equity, and their solicitors. And except in cases where personal or other notice is specially required or directed, such entry in the order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings, entered in such order book, touching any and all the matters in the suits, to and in which they are parties and solicitors. And notice to the solicitors shall be deemed

notice to the parties for whom they appear, and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the Judges of the Circuit Court may, by rule, abridge the time for notice of rules, orders, or other proceedings, not requiring personal service on the parties, in their discretion.

5. All motions and applications in the Clerk's office, for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso;* for filing exceptions, and for other proceedings in the Clerk's office, which do not, by the rules hereinafter prescribed, require any allowance or order of the Court, or of any Judge thereof, shall be deemed motions and applications, grantable, of course, by the Clerk of the Court. But the same may be suspended, or altered, or rescinded, by any Judge of the Court, upon special cause shewn.

6. All motions for rules or orders and other proceedings, which are not grantable of course, or without notice, shall, unless a different time be assigned by a Judge of the Court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not shew good cause against the same, the motion may be heard by any Judge of the Court *ex parte*, and granted, as if not objected to or refused, in his discretion.

PROCESS.

7. The process of subpœnà shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and unless otherwise provided in these rules, or specially ordered by the Circuit Court, a writ of attachment, and if the defendant cannot be found, a writ of sequestration, or a writ of assistance, to enforce a delivery of pocession, as the case may require, shall be the proper process to issue, for the purpose of compelling obedience to any interlocutory or final order or decree of the Court.

8. Final process to execute any decree, may, if the decree be solely for the payment of money, be by writ of execution, in the form used in the Circuit Court in suits at common law in actions of assumpist. If the decree be for the perforance of any specific act, as, for example, for the execution of a conveyance of land, or the delivering up of deeds, or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff, filed in the Clerk's office, that the same has not been complied with within the prescribed time, the Clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the Court, or of a Judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

9. When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the Clerk of the Court.

10. Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process, as if he were a party in the cause; and every person, not being a party in any cause, against whom obedience to any order of the Court may be enforced, shall be liable to the same process for enforcing obedience to such order, as if he were a party in the cause.

SERVICE OF PROCESS.

11. No process of subpœna shall issue from the Clerk's office in any suit in equity, until the bill is filed in the office.

12. Whenever a bill is filed, the Clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff, which shall be returnable into the Clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpœna shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the Clerk's office, on or before the day, at which the writ is returnable; otherwise, the bill may be taken *pro confesso*. Where there are more than one defendants, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife, defendants, or a joint subpœna against all the defendants.

13. The service of all subpœnas shall be by a delivery of a copy thereof by the officer serving the same, to the defendant personally, or in case of husband and wife, to the husband personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some free white person, who is a member or resident in the family.

14. Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpœna, *toties quoties*, against such defendant, if he shall require it, until due service is made.

15. The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the Court for that purpose, and not otherwise; in the latter case, the person serving the process shall make affidavit thereof.

16. Upon the return of the subpœna, as served and executed upon any defendant, the Clerk shall enter the suit upon his docket as pending in the Court, and shall state the time of the entry.

APPEARANCE.

17. The appearance day of the defendant shall be the rule day, to which the subpœna is made returnable; provided he has been served with the process twenty days before that day; otherwise, his appearance day shall be the next rule day succeeding the rule day, when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the Clerk.

BILLS TAKEN PRO CONFESSO.

18. It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shewn, by a Judge of the Court upon motion for that purpose, to file his plea, demurrer, or answer to the bill in the Clerk's office, on the rule day next succeeding that of entering his appearance; in default thereof, the plaintiff may, at his election, enter an order (as of course,) in the order book, that the bill be taken *pro confesso;* and thereupon the cause shall be proceeded in *ex parte,* and the matter of the bill may be decreed by the Court at the next ensuing term thereof accordingly, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer; and the defendant shall not, when arrested upon such process, be discharged therefrom, unless, upon filing his answer, or otherwise complying with such order, as the Court or a Judge thereof may direct, as to pleading to, or fully answering the bill, within a period to be fixed by the Court or Judge, and undertaking to speed the cause.

19. When the bill is taken *pro confesso*, the Court may proceed to a decree at the next ensuing term thereof, and such decree rendered shall be deemed absolute, unless the Court shall at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shewn upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the Court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the Court shall direct, and submit to such other terms as the the Court shall direct, for the purpose of speeding the cause.

FRAME OF BILLS.

20. Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance shall be as follows: "To the Judges of the Circuit Court of the United States, for the District of ———. A. B. of ———; and a citizen of the State of ———, brings this, his bill, against C. D., of ———, and a citizen of the State of ———, and E. F., of ———, and a citizen of the State of ———. And thereupon your orator complains and says, that, &c."

21. The plaintiff in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses, which the defendant is supposed to intend to set up by way of defence to the bill; also, what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And

the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter-averments, at his option, any matter or thing, which he supposes will be insisted upon by the defendant, by way of defence or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief, to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is required, it shall also be specially asked for.

22. If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason, why they are not made parties, by shewing them to be without the jurisdiction of the Court, or that they cannot be joined without ousting the jurisdiction of the Court as to the other parties. And as to persons who are without the jurisdiction, and may properly be made parties, the bill may pray, that process may issue to make them parties to the bill, if they should come within the jurisdiction.

23. The prayer for process of subpœna in the bill shall contain the names of all the defendants, named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the Court may take order thereon, as justice may require, upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

24. Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part, that upon the instructions given to him, and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

25. In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State Court of Chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

26. Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recital of deeds, documents, contracts, or other instruments, in *hæc verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may on exceptions be referred to a Master by any Judge of the Court for impertinence, or scandal, and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the Court or a Judge thereof shall otherwise order. If the Master shall report, that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

27. No order shall be made by any Judge for referring any bill, answer, or pleading, or other matter, or proceeding, depending before the Court for scandal or impertinence, unless exceptions are taken in writing, and signed by counsel, describing the particular passages,

which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule day, after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order when obtained, shall be considered as abandoned, unless the party obtaining the order, shall without any unnecessary delay, procure the Master to examine and report for the same, on or before the next succeeding rule day, or the Master shall certify, that further time is necessary for him to complete the examination.

AMENDMENTS OF BILLS.

28. The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the Clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point, (as he may do of course,) after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places, where the same are to be inserted. And if the amendments are numerous, he shall furnish in like manner to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

29. After an answer, or plea, or demurrer, is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any Judge of the Court to amend his bill on or before the next succeeding rule day, upon payment of costs, or without payment of costs, as the Court or a Judge thereof may, in his discretion, direct. But after replication filed, the plaintiff shall not be permitted to withdraw it, and to amend his bill, except upon a special order of a Judge of the Court, upon motion or petition, after due notice to the other party, and upon proof by affidavit, that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the Judge for speeding the cause.

30. If the plaintiff, so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the Clerk's office, on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

31. No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion, it is well founded in point of law, and supported by the affidavit of the defendant, that it is not interposed for delay; and if a plea, that it is true in point of fact.

32. The defendant may, at any time before the bill is taken for confessed, or afterwards, with the leave of the Court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer, fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

33. The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him, as far as in law and equity they ought to avail him.

34. If upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the Court shall be satisfied that the defendant had good ground in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as consistently with justice and the rights of the defendant, the same can in the judgment of the Court, be reasonably done; in default whereof, the bill shall be taken against him, *pro confesso*, and the matter thereof proceeded in, and decreed accordingly.

35. If upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the Court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

36. No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

37. No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter, as may be covered by such demurrer or plea.

38. If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day, when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a Judge of the Court shall allow him further time for the purpose.

ANSWERS.

39. The rule, that if a defendant submits to answer, he shall answer fully to all the matters of the bill, shall no longer apply, in cases where he might, by plea, protect himself from such answer and discovery. And the defendant shall be entitled, in all cases by answer, to insist upon all matters of defence, (not being matters of abatement, or to the character of the parties or matters of form,) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar or

defence. Thus, for example, a *bona fide* purchaser, for a valuable consideration, without notice, may set up that defence by way of answer, instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title, than he would be in any answer in support of such plea.

40. A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories, which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill, to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

41. The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively, 1, 2, 3, &c.; and the interrogatories, which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form, or to the effect following; that is to say,— "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, &c.;" and the office copy of the bill taken by each defendant shall not contain any interrogatories except those, which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

42. The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in, or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

43. Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words, "To the end, therefore," there shall hereafter be used words in the form, or to the effect following: "To the end, therefore, that the said defendants may, if they can, shew why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make, to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer; that is to say:—

" 1. Whether, &c. 2. Whether, &c.

44. A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

45. No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same, with or without the payment of costs, as the Court, or a Judge thereof, may, in his discretion, direct.

46. In every case, where an amendment shall be made after answer

filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule day after that, on which the amendment or amended bill is filed, unless the time therefor is enlarged, or otherwise ordered by a Judge of the Court; and upon his default the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

47. In all cases where it shall appear to the Court, that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the Court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the Court as to the parties before the Court, the Court may, in their discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

48. Where the parties on either side are very numerous, and cannot without manifest inconvenience and oppressive delays in the suit, be all brought before it, the Court, in its discretion, may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

49. In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the Court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

50. In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party, where he desires to have the will established against him.

51. In all cases in which the plaintiff has a joint and several demand, against several persons, either as principles or sureities, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

52. Where the defendant shall, by his answer, suggest, that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the Clerk's order book, in the form, or to the effect, following; that is to say: "Set down upon the defendant's objection for want of parties," And where the

plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course, to an order for liberty to amend his bill by adding parties. But the Court, if it thinks fit, shall be at liberty to dismiss the bill.

53. If a defendant shall, at the hearing of a cause, object, that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified, by name or description, the parties to whom the objection applies, the Court, if it shall think fit, shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO BILLS.

54. Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party upon service of the subpœna upon him, need not appear and answer the bill unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer, he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the Court shall otherwise direct.

55. Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same, within the time prescribed therefor by these rules, the plaintiff shall be entitled, as of course, upon motion without notice, to such injunction. But special injuctions shall be grantable only upon due notice to the other party by the Court in term, or by a Judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case, where an injunction, either the common injunction, or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the Court, or until it is dissolved by some other order of the Court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

56. Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same; which bill may be filed in the Clerk's office at any time; and upon suggestion of the facts, the proper process of subpœna shall, as of course, be issued by the Clerk, requiring the proper representatives of the other party to appear and shew cause, if any they have, why the cause should not be revived. And if no cause shall be shewn at the next rule day, which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

57. Whenever any suit in equity shall become defective, from any event happening after the filing of the bill, (as, for example, by a change of interest in the parties,) or for any other reason, a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any Judge

of the Court on any rule day, upon proper cause shewn, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule day after the supplemental bill is filed in the Clerk's office, unless some other time shall be assigned by a Judge of the Court.

58. It shall not be necessary in any bill of revivor, or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWERS.

59. Every defendant may swear to his answer before any Justice or Judge of any Court of the United States, or before any Commissioner appointed by any Circuit Court to take testimony or depositions, or before any Master in Chancery appointed by any Circuit Court, or before any Judge of any Court of a State or Territory.

AMENDMENT OF ANSWERS.

60. After an answer is put in, it may be amended, as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document or other small matter, and be re-sworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the Court, or of a Judge thereof, upon motion and cause shewn, after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the Court or the Judge granting the same, may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

61. After an answer is filed on any rule day, the plaintiff shall be allowed until the next succeeding rule day to file in the Clerk's office, exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shewn to the Court or a Judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

62. When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a Master, upon reference to him, shall certify, that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

63. Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same, and file an amended answer on the next succeeding

rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter, before a Judge of the Court; and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient: provided, however, that the Court, or any Judge thereof, may, for good cause shewn, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such trrms as he may deem reasonable.

64. If at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto, on the next succeeding rule day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom, but by an order of the Court, or of a Judge thereof, upon his putting in such answer, and complying with such other terms, as the Court or Judge may direct.

65. If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the Court, or the Judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

66. Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto, on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed, the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the Court or a Judge thereof, shall, upon motion for cause shewn, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY, HOW TAKEN.

67. After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party, taking out the same, in the Clerk's office, ten days notice thereof being given to the adverse party to file cross interrogatories before the issuing of the commission; and if no cross interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the Commissioner or Commissioners shall be named by the Court, or by a Judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties, or their agents, without filing any written interrogatories.

68. Testimony may also be taken in the cause, after it is at issue, by deposition, according to the Acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission, or by a new deposition taken under the Acts of Congress, if a Court, or a Judge thereof, shall, under all the circumstances, deem it reasonable.

69. Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the Court, or a Judge thereof, shall, upon special cause shewn by either party, enlarge the time: and no testimony taken after such period, shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony, into the Clerk's office, publication thereof may be ordered in the Clerk's office by any Judge of the Court, upon due notice to the parties, or it may be enlarged as he may deem reasonable, under all the circumstances. But by consent of the parties, publication of the testimony may, at any time, pass in the Clerk's office, such consent being in writing, and a copy thereof entered in the order book, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

70. After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged or infirm, or going out of the country, or that any of them is a single witness to a material fact, the Clerk of the Court shall, as of course, upon the application of the plaintiff, issue a commission to such Commissioner or Commissioners, as a Judge of the Court may direct, to take the examination of such witness or witnesses, *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

71. The last interrogatory in the written interrogatories to take testimony now commonly in use, shall, in the future, be altered, and stated in substance, thus:—"Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS BILL.

72. Where a defendant in equity files a cross bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross bill. The answer of the original plaintiff to such cross bill may be read and used by the party filing the cross bill, at the hearing, in the same manner, and under the same restrictions as the answer, praying relief, may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

73. Every decree for an account of the personal estate of a testator intestate, shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the Court, what parts, if any, of such personal estate are outstanding or undisposed of, unless the Court shall otherwise direct.

74. Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance, or for whose benefit the reference is made, shall cause the same to be presented to the master for a hearing, on or before the next rule day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the cost of the party procuring the reference.

75. Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the Court, or a Judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the Court or Judge the reasons for any delay.

76. In the reports made by the master to the Court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them, shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer, shall be identified, specified, and referred to, so as to inform the Court what state of facts, charge, affidavit, deposition, examination, or answer, were so brought in or used.

77. The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents, applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the Clerk's office, or by deposition according to the acts of Congress, or otherwise as hereinafter provided; and also to direct the mode, in which the matters requiring evidence, shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

78. Witnesses who live within the district, may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpœna in the usual form, which may be issued by

the Clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in Court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the Court, which being certified to the Clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the Court, or of any Judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the Court. But nothing herein contained shall prevent the examination of witnesses *viva voce*, when produced in open Court, if the Court shall, in its discretion, deem it advisable.

79. All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties, who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories in the master's office, or by deposition, as the master shall direct.

80. All affidavits, depositions, and documents, which have been previously made, read, or used in the Court, upon any proceeding in any cause or matter, may be used before the master.

81. The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories, or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examination shall be taken down by the master, or by some other person, by his order, and in his presence, if either party requires it, in order that the same may be used by the Court, if necessary.

82. The Circuit Courts may appoint standing masters in chancery in their respective districts, both the Judges concurring in the appointment; and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services, in any particular case, shall be fixed by the Circuit Court, in its discretion, having regard to all the circumstances thereof; and the compensation shall be charged upon, and borne by, such of the parties in the cause, as the Court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the Court, he shall be entitled to an attachment for the amount against the party, who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the Court.

EXCEPTIONS TO REPORT OF MASTER.

83. The master, as soon as his report is ready, shall return the same into the Clerk's office, and the day of the return shall be entered by the Clerk in the order book. The parties shall have one month from the time of filing the report, to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed, they shall stand for hearing before the Court, if the Court is then in session; or, if not, then at the next sitting of the Court, which shall be held thereafter by adjournment, or otherwise.

84. And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party, whose exceptions are overruled, shall, for every exception overruled, pay costs to the other party, and for every exception allowed, shall be entitled to costs—the costs to be fixed in each case by the Court, by a standing rule of the Circuit Court.

DECREES.

85. Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrolment thereof, be corrected by order of the Court or a Judge thereof, upon petition, without the form or expense of a re-hearing.

86. In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin in substance as follows: "This cause came on to be heard (or to be further heard, as the case may be,) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz:" [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

87. Guardians *ad litem* to defend a suit may be appointed by the Court, or by any Judge thereof, for infants or other persons, who are under guardianship, or otherwise incapable to sue for themselves; all infants and other persons so incapable, may sue by their guardians, if any, or by their *prochein ami*, subject however, to such orders as the Court may direct for the protection of infants and other persons.

88. Every petition for a re-hearing shall contain the special matter or cause, on which such re-hearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person.—No re-hearing shall be granted after the term, at which the final decree of the Court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the Court, in the discretion of the Court.

89. The Circuit Courts (both Judges concurring therein,) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

90. In all cases, where the rules prescribed by this Court, or by the Circuit Court, do not apply, the practice of the Circuit Court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district, where the Court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

91. Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an

oath, in lieu thereof, make solemn affirmation to the truth of the facts stated by him.

92. These Rules shall take effect, and be of force, in all the Circuit Courts of the United States, from and after the first day of August next; but they may be previously adopted by any Circuit Court in its discretion; and when and as soon as these Rules shall so take effect, and be of force, the Rules of Practice for the Circuit Courts in Equity Suits, promulgated and prescribed by this Court, in March 1822, shall henceforth cease, and be of no further force or effect. And the Clerk of this Court is directed to have these Rules printed, and to transmit a printed copy thereof, duly certified, to the Clerks of the several Courts of the United States, and to each of the Judges thereof.

I, WILLIAM THOMAS CARROLL, Clerk of the Supreme Court of the United States, do hereby certify, that the foregoing ninety-two Rules have been ordered, by the said Supreme Court, to be the "*Rules of Practice in suits in Equity in the Circuit Courts.*"

Promulgated by the said Supreme Court, on this second day of March, in the year of our Lord one thousand eight hundred and forty-two.

Per Curiam:

TESTE:

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Old Fee Bill of 1791.

FEES OF ATTORNIES, CLERKS & SHERIFFS, IN THE SUPERIOR COURTS OF LAW, ACCORDING TO THE OLD FEE BILL OF 1791:[a] SINCE SUPERSEDED.

Plaintiff's Attorney.

For filling up writs, signing, attendance to lodge the same with Sheriff, in cases where no bail is required, and all incidental charges, when settled before declaration filed,	$4 29
For every extra copy of a writ and notice,	32
For all subsequent proceedings whatever, from the filing of the declaration, or obtaining interlocutory judgment inclusive, where no bail is required,	5 36
In all cases where special bail is required,	1 50
For all proceedings subsequent to the former, including final judgment and verdict,	3 21
For all other services whatever, including the whole proceedings to the issuing of execution inclusive,	1 29
For all exhibits in cases of covenant, per copy sheet of ninety words,	09
To the Jury in each case tried,	1 07

Attornies Fees in extraordinary cases.

For every demurrer, joinder, and argument on a point of law,	5 36
For every motion for a new trial, or for arrest of judgment, or special matter and argument,[b]	5 36
For every renewal of writ or execution,	1 07
For filling up every writ of subpœna, and four tickets inclusive,	1 07
Every rule to shew cause in arrest of judgment, copy and notice, and motion for trial,	1 50
Preparing every commission to examine witnesses where necessary, attending to strike commissioners, drawing interrogatories in chief, and cross interrogatories and instructions,	8 57
(*Witnesses costs, see "Fee Bill: now of force."*)	
For commencing and prosecuting, and defending a suit by summary process,[c]	4 29
All fees in dower or partition from the commencement to the end of the proceedings, all services inclusive, surveyor's fees extra,	21 43
On writs of attachment, in addition to common costs, on bond, note or account, except printer's bill,	12 36

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a 5 Stat. 154; Resolutions of the Legislature, 1812, p. 110.

In relation to costs in the City Court of Charleston, the 2d section of the Act of 1818, (7 Stat. 319) declares, "That the charges and fees of the several offices of said inferior City Court, shall be the same as in the Court of Sessions and Common Pleas, in like cases." At the time this Act was passed, the old Fee Bill of 1791 was of force. The practice in the City Court is, and has invariably been, to tax costs under this old Fee Bill, without reference to the Act of 1827, and other subsequent Acts, regulating the fees of the officers of the Court of Common Pleas and general Sessions.

b Harp. Rep. 472.

c By the Act of 1809, 5 Stat. 596, only one half costs allowed Attornies, Clerks and Sheriffs, if demand is under fifty dollars.

Defendant's Attorney.

For appearance, filing bail and imparlance,	$4 29
Drawing and filing plea or demurrer, or other proceedings, previous to joinder in demurrer, or issue taken,	3 75
Verdict in cases for defendant, postea bill of costs, and allowing taxation, copy and notice, including all charges,	2 14
For drawing commissions to examine witnesses, drawing interrogatories, attending to strike commissioners, and instructions, all incidental charges inclusive,	8 57
Copies of all exhibits necessary to be filed by defendant, per copy sheet,	09

Clerks.

For attending to sign a writ, and affixing seal,	21
For filing a declaration, plea, replication and demurrer, joinder in demurrer, or other pleading,	16
For copying a declaration or other writing, per copy sheet,	09
For entering every special order of Court, or copy,	11
Every search in the records, where the cause is ended,	14
Signing every judgment,	43
Attending drawing a jury for special Court,	75
Each day's attendance at a special Court,	75
Drawing a bail piece, attending and taking bail,	43
For recording every judgment or other writing, for every copy sheet,	09
For every recognizance,	43
For receiving money in Court and paying it again, one per cent.	
For his attendance in every cause tried in Court, swearing jury, and reading papers and docketing the same,	43
For swearing every witness,	11
For every certificate, and signing,	11
For administering every oath,	11
For reading a verdict,	11
For attending at the Judge's chambers on a special argument,	43
For making out a license for the admission of an attorney, administering the oath and reading the qualification,	6 43
For recording or copying a plat of land, and copy,	50
For issuing a certiorari, or other special writ, and sealing,	75
For a dedimus potestatem and sealing,	43
For filing and entering return thereof,	21
For entering a decree on summary process and execution,	43
For recording the brand and mark of a stock of cattle,	32
On a *noli prosequi*,	1 50
When a bill is found or thrown out,	3 21
Upon bill found, and trial before petit jury and verdict,	4 29
On each writ of venire for summoning jurors,	32
On each writ of *habeas corpus*, or bench warrant,	1 50
Each writ of subpœna and tickets,	43
For every order of bastardy, taking a recognizance, and all other proceedings,	54
For each order for restitution of goods,	25
For each certificate to the Coroner,	14
For the whole fee of a tavern license and bond,	2 00

Sheriff.

For serving every writ or summons, or other process, taking bail, returning and proving service, and assigning bail bond,	1 50
For copy left at defendant's residence, or where he cannot be personally arrested, returning and proving service,	1 07
For mileage from the court-house of the districts respectively, to the defendant's residence, or where he shall be found or taken, but not for returning, each mile,	05
For commitment and releasement of any prisoner,	54
For summoning all juries, to the Sheriff of each district Court, $64.29 per annum, to be paid by the State.	
For serving any order or rule of Court, except public orders or rules, and delivering a copy,	43

For serving every writ of subpœna and tickets, and returning the same, -	$0 43
For serving a bench warrant, or warrant of a Justice of Peace, and return thereof, and proving service in the same manner as on services of writs, -	86
For every return of a writ where the goods or persons are not to be found, -	43
For dieting white persons in the several gaols and work-houses in the State, allowing 1lb of bread and 1lb of flesh, wholesome provisions, per day, *a* -	21
For dieting negroes, or other slaves, allowing wholesome food, per day, *b* -	14
For executing a person condemned to death, to be paid by the State, - -	4 29
For putting a person in the Stocks, branding, pilloring, whipping or cropping, to be paid by the State, each, - - - - - - - -	1 07
For bringing up a person on *habeas corpus*, and discharging or conveying to prison, to be paid by the party if solvent, if insolvent, then by the State, -	1 07
For conveying a prisoner on *habeas corpus* or otherwise, from one district or county gaol to another, every mile he shall necessarily ride, going to and returning, for each mile, - - - - - - - - - -	05
All necessary expenses to be allowed the Sheriff, in addition to the immediate foregoing charge, for levying an execution on the goods of the defendant, and selling the same; for all sums where the debt does not exceed one hundred pounds, two and a half per cent. commissions; and for all sums where the debt exceeds one hundred pounds, one per cent. In all cases where the defendant, after the Sheriff may have levied upon the property, shall settle with the plaintiff before actual sale, the Sheriff in such cases shall be only entitled to one-fourth per cent., besides all reasonable disbursements, and also fees for entering executions; but if the defendant shall pay the money to the Sheriff, one per cent. in lieu of the one-fourth.	
Where an execution shall be lodged in the Sheriff's office only to bind the property, with directions not to levy, for entering the same in his books, - -	54
For serving an execution against the body of defendant and return, - -	1 50
For every prisoner brought up for trial at the Sessions, to be paid by the State, -	32
For drawing each set of conveyances, - - - - - -	5 36

a Increased by the Act of 1805, 5 Stat. 500, to 37½ cents per day.

b Increased by the Act of 1810, 5 Stat. 619, to 25 cents per day.

Fee Bill: now of force.

IN THE SUPERIOR COURTS OF LAW.[a]

Plaintiff's or Defendant's Attorney.

For rule on Sheriff, or other officer of the Court, - - - -	$3 00
Issuing writ of attachment for contempt, - - - - -	3 00

(1827, 6 Stat. 333.)

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a For various Statutes and cases on the subject of costs, see note in 2 Stat. 743. In separate suits on a joint and several note, bond or other obligation, full costs are allowed in only one case, and but one fourth costs in the other separate cases, 1827, 6 Stat. 336 § 7: not repealed by the A. A 1839 and 1840, regulating the fees of Clerks and Sheriffs. Arledge v. Ford, 2 Rich. 58. Treble costs in cases against patrol. 1839, 11 Stat. 61 § 19. Double costs in cases under Militia Act of 1841. 11 Stat. 210 § 157. Double costs in cases against Magistrates, Constables and Bailiffs. 1733 (P. L. 135;) Barksdale v. Morrison, 3 McC. 134.

In matters of tort, no costs are allowed if the recovery is under £20 currency, ($12.24) unless title to property is established, and then costs are allowed if the recovery is above $4. 1747, (P. L. 214) McCullough v. McCullough, 2 N. & McC. 361 : Vaughan v. Cade, 2 Rich. 53. In matters of contract, Magistrates have exclusive jurisdiction of and under $20. Vaughan v. Cade, 2 Rich. 50. and cases there collected. Plaintiff, suing in the general jurisdiction, only entitled to sum. pro. costs, when the demand is reduced by actual payments to within the sum. pro. jurisdiction: otherwise when the demand is reduced by discount. Levy and Roberts, 1 McC. 395; Smith v. McMaster, 3 McC. 288; Duggan v. Roche, 2 Hill 584. See Furman et al., vs. Peay, 2 Bail. 612. In debt on penal bond, the smallest damages will carry costs. Wylie v. Stroud, et al., 1 Speer 141. Costs allowed in action of ravishment of ward, to try ward's freedom, though no damages found. Clifford v. Phillips, 1 McC. 469. The only costs allowed upon a suggestion of fraud, under the prison bounds act, are those of the Clerk and Sheriff. Gilchrist v. Edwards, 1 Rich. 191. Costs under a suggestion on Sheriff's bond. Rowell v. Mulligan, 2 Strob. —. No costs allowed in a *'qui tam* action for the benefit of the public. O'Driscoll v. McCants, 2 Bay 323. Slaves convicted of offences, owners not liable to pay costs of prosecution. Penning v. Porter, 1 M. Cons. Rep. 396.

Where a suit abates by the death of one of the parties, each party pays his own costs. Latta v. Admrs. of Surginer, 2 McC. 430. Nominal plaintiffs in suits on notes, negotiable or unnegotiable, when liable for costs. Bennett v. McFall, 2 M. Cons. Rep. 198; Horton v. Blair, 2 Bail. 546; Myers v. James, Id. 547; Lomax v. Baker, 1 Speer 161. Action on administration bond, in the name of the Ordinary, for the benefit of a distributee, the distributee and not the Ordinary liable for costs. Bomar v. Trail, 1 Bail. 533. Sureties to prison bounds' bond and Sheriffs' bond, not liable for costs in cases against their principal. Baker et al v. Bushnell, 2 McMul. 21; Leslie et al. v. Taggart, et al., 2 McMul. 71. Executors and administrators, when, and when not, liable for costs. See Fink & Co. ads. Luten, 2 Bay 166; Vanderhorst v. Whitner, 2 Bay 399; Cowsar's Exr. v. Wade, 2 Brev. 291; Jamison v. Lindsay, 1 Bail. 80: Moore et al. v. Hunt et al, 1 Bail. 370; Bordeaux v. Cave, 2 Bail. 6; Adm'r of Mealer v. Ex'or of Meyer, 2 Bail. 53; Ker Boyce v Hancock, Id.; Farley v. Farley, 2 Bail. 319; Gyles et al. v, Pratt, 1 Hill 239. In issues which the parties are entitled to make up as a matter of right, or when the Court neglects to make an order regulating the costs on a feigned issue, the costs follow the result of the case. Todd v. Stroud, 1 Rich. 25; Baker et al. v. Bushnell. 2 McMul. 22, and cases there cited; Westmoreland v. Tippens, 1 Bail. 514; Cohen ads, Sherman, 2 Speer 529. Defendant not entitled to receive costs against the relator, where a motion for a prohibition is dismissed without an order concerning the costs. City Council of Beaufort v. Danner et al., 1 Strob. 176. Costs in separate suits for a joint trespass. Hawkins v. Hatton, 1 N. & McC. 318. Where there are several defendants and verdict in favor of one. Trapp v. McKenzie, 2 N. & McC. 571, McClure v. Sutherland, 4 McC. 153; Clark v. Linsser et al. 1 Bail. 187. Judgment of *non pros.* and execution for Defendant's costs. Boney et al., ads. Moses, 1 N. & McC. 58. Pending an appeal from a non suit, plaintiff dies, defendant may have leave to enter up judgment and have execution for his costs. Cordray v. Barnes, 3 Rich. 281.

Plaintiff's Attorney.

For issuing every writ, and other incidental charges to filing declaration,	$4 00
For filing declaration, posting rules, and all incidental charges before entering up judgment,	4 00
For entering up judgment, issuing execution, and all incidental charges whatever inclusive,	3 00
Where special bail is required,	1 00
For every subpœna writ and ticket,	1 00
For every renewal of execution,	1 00
For every demurrer or joinder in demurrer,	3 00
For every motion for a new trial, in arrest of judgment, or special matter and argument on trial in Circuit, or in the Court of Appeals, [a]	5 00
For every rule to shew cause,	2 00
For every commission to examine witnesses, or filing cross interrogatories, [b]	8 00
For every appeal from a Magistrate,	2 00
For commencing, defending, and prosecuting every case in summary process, where the amount sued for does not exceed fifty dollars,	2 00
In cases exceeding fifty dollars,	4 00
(The two last, exclusive of subpœna writs and commissions, and inclusive of all other charges.)	
For all proceedings in dower, from beginning to end, [c]	20 00
For cases of attachment, in addition to common costs,	10 00
For every bill of exceptions tendered to a Judge to sign,	5 00
To the Jury in each case tried,	1 00

(1827, 6 *Stat.* 333.)

Defendant's Attorney.

For appearance and all services before filing plea inclusive,	4 00
For filing plea, demurrer, joinder in demurrer, and all services before trial,	4 00
For entering up judgment, issuing *fieri facias*, and all incidental charges inclusive,	3 00

Security for costs, when and how required, &c. See Rule 74, G. S. &. C. P., 1837, *ante* page 44, and cases there referred to. Liability of Attorney to Clerk and Sheriff for costs, when plaintiff resides beyond the limits of the State. 1791, 5 Stat. 161 § 5; Benson v. Whitfield, 4 McC. 149. Payment of costs postponed till termination of suit. Hyams v. Boyce, 1 McMul. 95. Taxation of costs: notice of taxation and items of costs. 1827, 6 Stat. 336 § 5; 1839, 11 Stat. 11 § 2; Farr v. Farr, 2 Hill, 554; Bogan v. White, Dud. 316; Williams v. Jones, 2 Hill 555: Shaw v. Kelly, 2 M. Cons. Rep. 317. Execution for costs due officers of Court; 1839, 11 Stat. 11 § 3; Corrie v. Jacobs et al., Harp. 326; Corrie v. Fitts, 3 McC. 25. Plaintiff not empowered to collect costs due officers of Court. Corrie v. Fitts, 3 McC. 25: Scharlock v. Oland, 1 Rich. 207.

In addition to the costs allowed by the fee bill, a party is entitled to be reimbursed for actual expenses, necessarily incurred. Under this head has been classed: Money paid to witnesses for their attendance before Commissioners to be examined, and to Commissioners for taking depositions: also, for the travelling and ferriage of a witness who resides out of the district, and for a notary's bill. Kirkley v. Nolly. 1 Hill, 398; Cox et al. v. Charleston F. and M. Insurance Company; 3 Rich. 331. — Expenses not allowed, viz: Money paid to an agent for taking and bringing back a commission to and from another State; Williams v. Jones, 2 Hill 555. Nor are costs allowed for a copy of the opinion of the Appeal Court, or for the printers' bill for briefs. Moore v. Adm'rs of Denson, 1 Speer 29.

a Clark v. Linsser, 1 Bail. 190; Morris v. Lapenne, 1 Bail. 191; Farr v. Farr, 2 Hill, 554; Cowsar's Ex'r v. Wade, 2 Brev. 291; Ramsay et al. v. Marsh et al., Harp. 472.

b Ramsay et al. v. Marsh et al., Harp. 472; Vickers v. Adm'r of La Bruce, 2 Hill 366; Furman v. Peay, 2 Bail. 612.

c Vance v. Becknall, 1 Bail. 140; Harshaw v. Davis, 1 Strob. 74.

Commissions to examine witnesses, or filing cross interrogatories, - -	$8 00
Motion for a new trial, in arrest of judgment, or special matter in argument on the trial on Circuit, or in the Court of Appeals, - -	5 00
Subpœna writ, or renewal of execution, - - - - -	1 00
Copies of all exhibits, per copy sheet, - - - - -	12½

(1827, 6 Stat. 333,)

Witnesses. [a]

To each material witness attending the Court, residing in the cities, [b] or towns, or villages, where the Courts are held, per day, - -	50
Each witness from the country, including horse hire, per day, - -	1 00

All witnesses to be allowed their ferriage and toll.
(1791, 5 Stat. 155.)

Attorney General.

On papers returned, and no indictment given out, and *noli prosequi* entered, - - - - - - - - - -	5 36
When an indictment is found, - - - - - -	8 57
Upon bill of indictment found, and trial before petit jury, and verdict or confession, - - - - - - - - -	15 00

Circuit Solicitors entitled to the same fees ; 1 Faust 165.
(1791, 5 Stat. 156.)

Clerks of the Courts of Common Pleas and General Sessions.

For signing writ, and all incidental services before declaration, - -	50
For filing declaration, - - - - - - - -	37½
For drawing and posting rule to plead, - - - - -	25
For granting order for judgment, - - - - - -	12½
For filing each plea, demurrer, or replication, - - - -	25
For rule to plead, including copy for gazette in attachments, - -	50
For signing and sealing subpœna writ, - - - - -	50
For docketing a cause, one charge only at each term, - - -	12½
For attending the trial of a cause, and swearing witnesses, - -	50
For entering verdict, or other order for final judgment on minutes of Court,	25
For making assessment on reference, - - - - - -	25
For filing discount in each cause, - - - - - -	25
For Special order for bail, - - - - - -	50

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a See Howard v. Stent. 2 Bail. 272. In criminal cases, witnesses subpœnaed for the Defendant are not entitled to costs, though the Defendant be found guilty. Little v. Goodman, 3 Rich. 91. Costs cannot be taxed for the attendance of a witness before the case is put on the inquiry docket. Bogan v. White, Dud. 316. Witness interested in the event of the suit, who was released at the time of the trial, not entitled to have costs taxed for his attendance, Rice et al. v. Palmer, 2 Bail. 117. A witness served with a ticket, but not regularly subpœnaed, notwithstanding he may have come from a distance, allowed only 50 cents per day. Bratton v. Clendenin, Harp. 454; see Johnson v. Wideman, Cheves 26. In taxing costs for attendance of witness, there should be an affidavit by witness, if alive, of his attendance and his intention to charge for it, and likewise proof of his having been subpœnaed. Clark v. Linsser et al., 1 Bail. 187. And where witness was not sworn on the trial, an affidavit of his materiality, or that he was summoned in good faith, must be submitted. Taylor v. McMahan, 2 Bail. 131; Farr v. Farr, 2 Hill 554; Love v. Ingram et al., 2 Speer 87. Party summoning entitled to receive witnesses costs from Sheriff. Sims v. Anderson, 1 Hill 394.

b Duggan v. Roche, 2 Hill 584.

For filing and recording every rule or order for arbitration,	$0 25
For filing and recording affidavit for continuance, when ordered by Judge,	25
For signing, entering, and enrolling judgment,	75
For signing and sealing first execution,	50
For signing and sealing each renewal of execution,	25
For entering satisfaction on judgment,	25
For taking security for costs, entering order therefor, if made,	50
For recording proceedings in each case, as required by law,	1 50
For administering oath, other than on trial of cause, proof of service on Sheriff's return, oath to jurors, or by order of Court,	12½
For taking and filing bonds in attachment, trover, or in other case,	1 00
For signing and sealing commission to examine witnesses,	75
Exemplification of proceedings, or other office copy, per copy sheet of ninety words,	9
Recording plat of land under order of same, or copying same,	50
Rule of survey,	50
Each official certificate under seal of Court, not herein specified.	50
Issuing writ of attachment for contempt, or other special writ,	1 00
Signing and sealing writ of *hab. fac. possessioncm*,	50
Receiving and paying over money officially, under three hundred dollars, two per cent.	
Receiving and paying over money officially, two per cent. on the first three hundred, and one per cent. on the excess.	
Filing suggestion to foreclose mortgage, or for other purpose leading to an issue,	50
In every summary process cause, where same is settled before decree, and the debt or demand is $50, or more,	75
In every summary cause after decree, when the debt or demand is $50 or more, all other services inclusive, except subpœna writs, commissions and orders for bail,	1 50
In all cases of summary process, when the debt or demand is under $50, only one half of the costs allowed.	
Every appeal from Magistrate, all services inclusive,	1 00
On bill *nol. pros.* before given out,	1 00
On bill thrown out by Grand Jury, or found, and *nol. pros.* abated, discontinued, or struck off,	2 00
On bill found, and verdict by Petit Jury,	3 00
All orders for bastardy and taking recognizance,	1 00
Issuing bench warrant, writ of *habeas corpus*, *scire facias*, and each execution on sessions,	1 50
For issuing warrant, taking recognizances, or other services in the sessions as Magistrate *ex officio*, same fees as allowed that officer,	
For services as to new jury list every three years,	3 00
For each writ of *venire facias*, including all services incident to summoning juries,	2 00
For preparing and issuing certificates for Grand and Petit Jurors and Constables, enrolling and furnishing return to Comptroller General for each week of the return of every Court,	5 00
For filing petition and signing writ *de lunatico inquirendo*,	1 00
For furnishing advertisements in cases of escheat, exclusive of printer's bill,	1 00
For recording whole proceedings therein,	2 00

For filing inventory and order of discharge of debtors,	$0 50
For granting rules against creditors,	50
For hearing and trying applications under prison bounds act,[a]	2 00
If a jury is required, issuing summons and charging same in addition,	2 00
For confession of judgment before Clerk, if for less than fifty dollars,	1 00
For confession of judgment before Clerk, if for more than fifty dollars,	2 00
For issuing execution in such case, and each renewal thereof,	1 00
For advertising and giving notice to managers of elections, in case of approaching or actual vacancy in the offices of Clerk, Sheriff, Ordinary, or Tax-Collector,	10 00.
For license to an attorney, all incidental services included,	5 00
For filing and entering notice of alien's intention to become a citizen,	1 00
For filing and recording report of alien,	1 00
For administering oath of intention,	1 00
For filing and entering application to become a citizen, and administering oath,	2 00
For giving certificate of citizenship,	1 00
For taking renunciations of dower or inheritance,	2 00
For official record of estray, and filing papers,	1 00
For filing papers and appointing guardian of free persons of color, and certificate,	2 00
For every search for a paper found, (not to be charged to the parties or attornies when for papers in a case pending,)	12½
For every search necessary for a certificate, that a paper is not to be found in office,	25
For swearing a Magistrate or Constable in office, and certificate thereof,	1 00
For granting license to pedlar, including all services,	5 00
For every probate in writing,	25
For signing *dedimus potestatem*,	1 00
For official certificate to exemplification of record,	1 00
For official certificates in other cases requiring the seal,	50
For official certificates without the seal,	25

(1839, 11 Stat. 8; 1840, 11 Stat. 106 § 7.)

Sheriffs.

For entering every writ, process, execution, or other paper, in writ or execution book, and making the indorsements therein.	25
For serving every writ, not otherwise herein specified, or summons in dower or partition, besides mileage,	1 00
For serving every summary process, where the debt or demand is over fifty dollars, rule, notice, or order of Court, besides mileage,	1 00
In all cases of summary process, where the debt or demand is under fifty dollars, only half the costs allowed by this act shall be charged.	
Mileage from Court-house to defendant or witness' residence, or place where found, going, but not returning, per mile,	5
For bail bond, or other bond or mortgage, taken officially,	1 00
Commitment and release of prisoner, each,	50
Serving each venire for Grand Jury,	10 00
Serving each venire for Petit Juries,	20 00

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a Gilchrist v. Edwards, 1 Rich. 191.

Serving subpœna writ, and mileage on each ticket,	$0 50
Serving bench or other warrants, *scire facias*, from Court of Sessions, or writ of attachment for contempt, besides mileage,	1 50
Search for person or goods not found, and return on the execution, of *non est inventus*, or *nulla bona*,	50
On each case returned in schedule, according to the act of 1827, [a]	25
Levying attachments or execution, besides mileage, [b]	1 00
Dieting white person per day, [c]	30
Dieting slaves or free negroes,	18
Executing convict, including all charges for burying and other expenses,	20 00
For putting convict in pillory, or stocks, or whipping him,	2 00
Bringing up prisoner under *habeas corpus*, to be paid by the prisoner, if able, (if not, the State,) besides mileage and necessary expenses,	1 00
Conveying prisoner from one place to another, for every mile going and returning, besides all necessary expenses, [a]	6
Commissions on all monies collected by him, if under three hundred dollars, two per cent.	
If over that sum, two per cent. for the first three hundred dollars, and one per cent. for the balance.	
And one half of one per cent. on all sums paid to plaintiff, as agent or attorney, on execution lodged with the Sheriff.	
Execution lodged to bind, with order not to levy,	50
For serving execution against the body of defendant, besides mileage,	1 50
For advertising defendant's property, in addition to printer's bill,	1 00
Drawing and executing a deed of conveyance, or taking mortgage,	3 00
Drawing and executing each bill of sale, when required by purchaser,	2 00
No sheriff shall charge more than one bill of sale for property bought at the same sale, by the same party.	
For excuting a writ of *habere facias possessionem*, besides mileage,	1 00
Transfering money bonds, or other securities for money to party, one half of one per cent.	
For selling land under decree of Ordinary, in lieu of commission, and all other charges, except for advertising,	2 00
For each notice served on a set of managers of elections, besides mileage,	1 00
Commissions on all sums paid out of the office on *fi. fas.* lodged, one-fourth of one per cent.	
Summoning freeholders to try suggestion of fraud under prison bounds act, (1833, 6 Stat 492.) [e]	5 00
Under the Militia Act of 1841, (11 *Stat.* 197 § 98.)	
From the person against whom execution shall issue: [f]	
For every fine paid before levy,	50
For every fine paid after levy and before sale,	1 00

a 1 Strob. 471. And see Act of 1847, 11 Stat. 433 § 2.

b 1 Rich. 13.

c Plaintiff when liable for jail fees, 1817, 6 Stat. 66; 1839, 11 Stat. 31 § 30; Caldwell v. Boyd, 1 N. & McC. 377; Black ads. Hyams. 4 McC. 503; Brian v. Ellis, Dud. 72; Thomasson v. Ker, 2 McMul. 342; Finth v. Deloach, 2 Speer 200; Hyams v. Michel, 3 Rich. 303.

d Taggert v. Hutson, Rice 302. Resolutions of 1807, *post* 121.

e 1 Rich. 191.

f Cheves 71.

For every fine collected by sale of property, including fee for advertising, 2 50
For arresting and committing delinquent to jail, - - - - 2 00
And the Sheriff shall be entitled to retain twenty per cent. on all fines he may collect.
(1840, 11 *Stat.* 104.)

Deputy Surveyors. [a]

For surveying every acre of land, - - - - - - 1
For making out a fair plat, certifying, signing and returning the same, [b] - 2 14
For running old lines for any person, or between parties, or by order of Court, while they are on the survey, per day, [c] - - - - 3 00
(1791, 5 *Stat.* 158.)

IN EQUITY. [d]

Complainant's Solicitor.

Drawing and filing a bill and necessary exhibits, - - - - 20 00
Every commission to examine witnesses, or other purpose, or filing cross interrogatories, - - - - - - - 8 00
Special matter and argument on the Circuit, or in Court of Appeals, on trial of the cause, - - - - - - - 5 00
Briefs for Circuit Judge, - - - - - - - 5 00
Briefs for Court of Appeals, - - - - - - 10 00
Exceptions to Commissioner's report, - - - - - 5 00
All petitions and incidental charges, - - - - - 10 00
Each day attending before Commissioners on reference, - - - 5 00
(1827, 6 *Stat.* 335.)

Defendant's Solicitor. [e]

Drawing and filing answer and exhibits, - - - - - 20 00
Every commission to examine witnesses, or other purposes, or filing cross interrogatories, - - - - - - - - 8 00

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a Surveyor, attending Court under rule of survey, entitled to the same costs as under subpœna. 1 Hill 399, overruling Nicklin v. Morrow, 1 Tr. Con. Rep. 474.

b Costs cannot be taxed for more than a single plat, although the plat comprise several distinct fields, or tracts. 1 Bail. 592; 1 McMul. 73.

c The Surveyor is entitled to $3 per diem, going and returning, as well as for each day employed in making the survey. 1 Bail. 592; 1 Hill 399. Fees of Surveyor General, *post.*

d See Rule 33 *ante*, page 57; Lowndes v. Chisolm, 2 McC. Ch. R. 465; Price v. White, Bail. Eq. R. 240; Dupont v. Johnson, Id. 279; Pinchback v. McCraven, 1 Hill's Ch. Rep 13; City Council v. Page. 1 Speer's Eq. 214; Muse Ex'r v. Peay, Dud. Eq. R. 236. Costs, a matter of discretion in Equity. Pace v. Burton, 1 McC. Ch. R. 251 No appeal lies upon a mere question of Costs. Lewis v. Wilson, 1 McC. Ch. 210 McMullan v. Elridge, Harp. Eq. R. 260; *Contra,* Stewart ads. Fowler, Id. 261. See Lyles v. Lyles. Adm'r 1 Hill's Ch. R, 92. Costs on amendment. Jennings v. Spring, Bail. Eq. R. 181. Costs on bills for discovery. McElwee v. Sutton. 1 Hill's Ch. R. 34. Floyd Ex'r v. White, Dud. Ch. R. 40. Executors and Administrators, when chargeable with costs. See Black v. Blakely, 2 McC. Ch. R. 9. Dupont v. Johnson. Bail. Eq. R 279: Davis v. Davis, 2 Hill's Ch. R. 377; Wham v. Love, Rice's Eq. R. 51. Costs allowed for copies of opinions of Appeal Court. Pinchback v. McCraven. 1 Hill's Ch. R. 414. Fees of a Receiver appointed by Court: 1821, 7 Stat. 323 § 2; Massey v. Massey, Cheves' Ch. Rep. 160.

e Costs are not allowed for a defence to a petition in Chancery, *Exparte* McClelland, 1 Hill's Ch. R. 112.

Special matter in argument on the trial on Circuit, or in the Court of Appeals,	5 00
Briefs for Circuit Judge,	5 00
Briefs for Court of Appeals,	10 00
Each day's attendance on reference before Commissioner,[a]	5 00
Exception to Commissioner's report,[b]	5 00

(1827, 6 *Stat.* 336.)

Masters and Commissioners in Equity.

For every summons,	37½
For taking affidavit in writing,	25
Swearing all the witnesses on reference before him, or on trial in Court,	1 00
Taking a recognizance,	50
Taking oath of the defendant to answer,	50
Each day engaged in holding reference,	1 00
Making up and returning report, but not more than one report in each case,	3 00

Commissions on all sales by order of Court, where the total amount of the sale, if all the property, shall not exceed five hundred dollars, two per cent.

And in all cases where it shall exceed that sum, one per cent.

And this to include all other charges, such as receiving and paying over money, or transferring bonds.

Commissions on all moneys received, other than on sales made by Commissioner, one per cent.

Deed of Conveyance,	3 00

(1827, 6 *Stat.* 335.)

Register in Equity.

Signing and sealing any writ,	25
Affidavits of service of writ, or other process,	25
Examination of witnesses, and taking down testimony, exemplification of proceedings, or other office copy, per copy sheet,	9
For every search,	12½
But for all searches in any case, not more than	1 00
Examining decree, affixing seal, &c.,	1 00
For every order published in a gazette, in addition to printer's bill,	50
Every commission to take answer or examine witnesses, or for other purposes,	50
For examining and filing each return of a guardian or trustee,[c]	1 00
For letters of guardianship, and taking bond,	5 00
For every rule against a defaulting guardian or trustee,	3 00

(In all districts in which there is not such an officer as Register in Equity, and in which the duties of Register are performed by a Commissioner, such Commissioner, or Commissioners in Equity, shall be entitled to charge and receive the fees allowed to the Register in Equity, according to services rendered.)

(1827, 6 *Stat.* 335.)

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a McDonald v. Williams, Rice's Eq. R. 296.

b McDonald v. Williams, Rice's Eq. R. 296.

c Speer's Eq. R. 29. 1 Rich. Eq R. 25.

Ordinary.

For a citation,	50
For qualifying executor, administrator, or guardian, issuing letter to either and recording such letters,	2 50
For taking bond from administrator or guardian, and recording same,	1 00
For issuing warrant of appraisement and oath,	50
For proving a will in common form, and filing and certifying the same,	1 00
For proving a will in solemn form, and filing and certifying the same,	5 00
For recording will, probate and certificate, per copy sheet of ninety words,	9
For filing and entering renunciation of executor,	50
For *dedimus potestatem* to prove will, or qualify as executor,	1 00
For recording each inventory and appraisement, or account of sales, each figure counting for a word, per copy sheet of ninety words,	9
For receiving, examining, and filing the annual or final accounts of each administrator, executor, or guardian, for first year,	3 00
For each succeeding year,	1 00
For recording said accounts, per copy sheet of ninety words,	9
For hearing and filing petition for sale of personal estate and order,	1 00
For hearing and filing petition for guardianship, and appointment of guardian,	1 00
For entering a caveat, or withdrawing the same,	50
For hearing every litigated case,	3 00
For swearing and examining each witness,	12½
For certifying copy of any paper on file in his office,	50
For copying such paper, per copy sheet of ninety words,	9
For every rule issued against defaulting witness, or party failing to account,	2 00
For every attachment issued on the return of such rule,	1 00
For furnishing and certifying copy of proceedings in case of appeal,	3 00
For every order of revocation of letters or substitution of other security,	1 00
For every search,	12½
For every certificate not hereinbefore specified,	25
For services in proceedings for sale or division of real estate,	12 00
For taking bonds in cases of guardianship of minors, or such sale or division of real estate,	3 00
On all monies collected on sale of real estate, and paid over by him, one per cent.	
For services, under the Act of 1842,[a] in the sale of real property, and paying over proceeds to executor where personal estate is insufficient to pay creditors, (1839, 11 *Stat.* 10.)	5 00

Magistrates.

Oath and warrant in any criminal case,	43
Each recognizance,	43
Each commitment,	21
Administering and certifying oath in writing, other than above,	32
Issuing writ of *habeas corpus*, to the two Magistrates jointly,	1 50
Issuing summons and copy for defendant in civil cases,	37
Isssuing summons for witnesses in any civil case,	21

[a] 11 Stat. 152.

Taking examination of witnesses in writing, in any case as prescribed by law,	50
For giving judgment on hearing litigated case,	25
For giving judgment in case not defended,	18
Issuing execution or renewal,	25
Report of case, and taking bond to appeal,	62½
Issuing attachment returnable to Court or to Magistrate, including all notices,	1 00
Filing return of garnishee, and order thereon,	12½
Proceedings on behalf of landlord or lessor, against tenant or or lessee, to the two Magistrates jointly,	10 00
Proceedings against vagrant, and returning report thereof,	2 00
Proceedings on certifying indenture of apprentice, or assignment,	1 00
Proceedings on trial of slaves and free negroes in capital cases, including all charges,	2 00
Proceedings on trial of slaves and free negroes in cases not capital,	1 00
Proceedings on Coroner's inquest as prescribed by law,	8 50
Proceedings on estray of horse or mule,	50
Proceedings on all other estrays, each,	12½
Taking and certifying renunciation of dower or inheritance,	2 00
Granting order for special bail,	50
Hearing and determining application under prison bounds act, same fees as allowed to Clerk.	
Issuing a patrol warrant or distress warrant,	43

Provided, that nothing herein contained, shall authorize or empower any Magistrate to demand, or receive any fee whatever for his services in any proceeding in causes small and mean, where the amount for which the summons shall be issued, shall be one dollar and fifty cents or under. (1840, 11 *Stat.* 105.[a])

Constables.

Summoning witness in a civil case,	21
For summoning freeholders to try question before Magistrates, between landlord and tenant, to be paid by the unsuccessful party,	10 00
For summoning coroner's jury and witnesses, to be paid by the State,	2 14
For serving a summons, rule, or notice, by a Magistrate, in a civil case, (no mileage to be allowed,)	50
For serving attachment on person absconding, or about to abscond, and making inventory and return, besides commissions at five per cent. on sale of effects (but no mileage,)	1 00
For hanging a slave, or free negro, according to sentence, to be paid by the State,	5 00
For whipping slave, or inflicting other corporal punishment, according to sentence, to be paid by State,	75
For selling estray, five per cent. on the proceeds.	
For levying execution, advertising sale, and paying over proceeds besides, commissions at five per cent. on amount to be collected (but no mileage) to be paid by the defendant in execution,	21

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a § 6. Nothing in this Act shall be construed to alter, abrogate, or interfere with the practice or fees as now established by law for the Magistrates of St. Philip and St. Michael. *Provided*, that the fees to be charged against the State, be uniform throughout the State.

For every day employed in searching for stolen goods, to be paid by party complaining, - - - - - - - - - - 1 00
For serving a warrant in any State case, (but no mileage,) to be paid by the State, if the proceedings be stopped at the instance of the State, or if the Grand Jury find no bill, or if the defendant be acquitted, or if it appear that though convicted, the defendant was discharged from inability to pay costs; otherwise to be paid by the defendant, - - 1 00
(1840, 11 Stat. 106.)

Coroner.

For every inquisition, - - - - - - - - 8 50
For mileage, (if over five miles from the Coroner's residence,) the same as is allowed to the Sheriff, going and returning.
For each warrant issued, - - - - - - - - 50
For each commitment, - - - - - - - - 50
For each recognizance, - - - - - - - - 75
For each body disinterred, - - - - - - - 3 00
For recording proceedings, in each inquisition, in his book, twelve cents per copy sheet of ninety words.
(1839, 11 Stat. 54 § 40.)

Notaries of Public.

For taking a deposition and swearing witness, per copy sheet, - - 11
For every protest, - - - - - - - - - 2 14
For a duplicate of depositions, protest and certificate, per copy sheet, - 9
For each attendance on any person to prove any matter or thing, and certifying the same, - - - - - - - - - 64
For every notarial certificate, with seal affixed, - - - - 54
(1791, 5 Stat. 158.)

Secretary of State.

For every search, - - - - - - - - - 14
For a commission for a place of profit, - - - - - 3 21
For entering satisfaction on a mortgage, - - - - - 21
For recording a mark or brand, - - - - - - - 21
For recording or copying any writing, for every copy sheet containing ninety words, - - - - - - - - - 9
For drawing a proclamation, and copy to the printer, to be paid by the State, - - - - - - - - - - 1 07
For a militia commission, to be paid by the State, - - - - 86
For a pardon or reprieve, with the great seal, and recording, to be paid by the State, - - - - - - - - - - 1 07
For attending the Court of Justice with records, - - - - 64
For finding the wax, and appending the great seal to laws, to be paid by the State, for each law, - - - - - - - - - 43
For a general commission of the peace, for any county or district, to be paid by the State, - - - - - - - - - 2 14
For a separate commission of the peace to be paid by the State, - - 54
For making out a grant of lands, recording and fixing the great seal, - 2 14
For a testimonial with the great seal, - - - - - - 1 07
For registering the certificate of a single person becoming a denizen, [a] - 25

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a 1799, 5 Stat. 355 § 4.

For a family not exceeding three,	50
For a family exceeding three,	1 00

(1790 5 *Stat.* 153.)

Register of Mesne Conveyances.

For recording and copying deeds or other papers, per copy sheet of ninety words,	9
For entering satisfaction on mortage,	25
For recording or copying plats, of not more than six corners,	1 00
And for every corner over six,	6¼
For every probate in writing,	25
For every search,	12½
For every certificate,	25

(1839, 11 *Stat.* 10.)

Commissioners of Locations.

For recording applications, making entries, and granting warrants under hand and seal,	75
For recording plat, and sending to Surveyor General's office,	1 75
For each copy of plat and certificate,	1 25

(1839, 11 *Stat.* 10.)

Surveyor General. [a]

For every search,	14
For copying a plat and certificate,	1 07
For receiving, recording a plat, and sending the same to the Secretary's office, to be passed into a grant,	2 14
For a certificate in all other cases,	32
For a deputation and instructions to a Deputy Surveyor,	1 07

(171, 5 *Stat.* 158.)

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a Fees of Deputy Surveyor, *ante* p. 100.

Acts and Resolutions of the Legislature,

AS TO THE MODE IN WHICH ACCOUNTS, PRESENTED TO THE LEGISLATURE FOR PAYMENT, ARE REQUIRED TO BE CERTIFIED.

Oath requisite to be taken by persons who may may make application to the Legislature for payment of Accounts.

Resolved, That in future all accounts exhibited against this State, shall be certified by such officers only as are known in law, and who directed the respective duties and services to be performed for the public; and said accounts shall also be attested, which attestation shall be subscribed to by the parties making the demands, and to be as follows:

——— District.

Personally appeared [*the party's name*] before me, [*the Magistrate's name*] who, after being duly sworn upon the Holy Evangelists of Almighty God, (*or affirm as the case may be,*) and saith, that the above (or within) account of —— dollars —— cents, is truly and justly due him from the State of South-Carolina, and that he has never received any part thereof, either by discount or otherwise, directly or indirectly. Witness my hand. A. B.

Sworn before me ——, this —— day of —— }
C. D. }

Magistrates and Constables not to receive fees from the State in certain cases.

Sec. 11. And be it further enacted by the authority aforesaid, That no Magistrate or Constable, after the passing of this Act, shall be entitled to receive any fees from the State, in any criminal case where the defendant shall be convicted, unless it shall appear from the certificate of the Clerk of the Court, that such defendant has been discharged from inability to pay costs.

(1823, 6 *Stat.* 232.)

Magistrates' Fees in criminal cases regulated.

Sec. 12. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, no Magistrate shall receive any fees whatever in criminal cases from the State, unless the whole proceedings shall have been returned to the Clerk of the Court; and unless bills of indictment be preferred, or the proceedings stopt at the instance of the State: *Provided*, that nothing herein contained, shall extend to the fees which any Magistrate or Constable may be entitled to, in the trial of any slave or person of colour.

(1823, 6 *Stat.* 232.)

Clerks, Sheriffs and Gaoler's Fees—how to be certified.

Sec. 7. And be it further enacted by the authority aforesaid, That after the passing of this act, no Clerk of the Court, Sheriff, or Gaoler, shall be entitled to receive any fees from the State, in any criminal case where the defendant shall be convicted, unless they make oath that such defendant has been discharged from inability to pay costs.

Sec. 8. And be it further enacted by the authority aforesaid, That no Sheriff or Gaoler shall be entitled to fees for dieting prisoners, unless they forward with their accounts the commitments and releasements of the Magistrates.

(1827, 6 *Stat.* 353.)

Clerk's Account against the State.

Sec. 35. In all cases the Clerk shall render his account against the State, under oath, to be taken and subscribed before any Magistrate of his district, in which shall be shewn the nature of the service, fully set forth, and if in the session, the name of the party, offence, charge, and termination thereof, and which shall be credited with all monies received by him, and due to the State; nor shall any Clerk be entitled to receive any fees from the State, in any case where the defendant is convicted, unless he makes oath that such defendant has been discharged from inability to pay costs.

(1839, 11 *Stat.* 79.)

Claims of Magistrates and Constables in the Parishes of St. Philip and St. Michael in what manner established, see 1829, 6 *Stat.* 387 § 3, 4.

Guarding Prisoners: compensation therefor, &c.

Resolved, That in the removal of prisoners from one district to another, when a guard may be necessary, that the number of men ordered for that service shall not exceed more than three for any number of prisoners not exceeding four; four for any number of prisoners not exceeding six; and for every three prisoners above six, an addition of one man as a guard; for which service the said guards shall be paid one dollar and fifty cents per day, if acting as horsemen, and one dollar per day if as infantry, in lieu of all expenses; and if attended by a Sheriff, or his deputy, he shall be considered as one of said guard, and not entitled to any other compensation, except the maintenance of the prisoners, which shall not exceed fifty cents per day, and fifty cents per day for horse hire, if conveyed on horseback.

Resolved, also, That the Legislature ought not to make provision for the payment of guards, unless the name of every person acting as such is mentioned in the account preferred against the State.

(*Resolutions of* 1807.)

Advertising Elections in Gazettes.

The Committee on Retrenchment reported, that it was "an unnecessary expenditure in causing the whole of the resolutions of the Legislature, in relation to general elections, to be published throughout the State, and recommend the following regulations in relation to it,"—which were agreed to by the house and concurred in by the Senate:

1st. That the said resolutions be printed with the Acts of the Legislature, and attached to the same.

2d. That they be published in one of the Charleston papers at the usual time of giving notice of the general elections.

3d. That in each district, where a gazette is published, so much of the said resolutions as relate to the district in which the gazette is published, shall be published in the same, the usual length of time before the election: but in no instance shall the publication be in more than one gazette, in each district.

(Resolutions of 1830.*)*

Resolved, That Managers of Elections throughout the State, be restrained from publishing notice of elections in newspapers more than twice a week for one month, and on the days of election.

(Resolutions of 1837.*)*

Resolved, That Managers of Elections for the Parishes of St. Philip's and St. Michael's, be restrained from publishing notice of elections in more than one of the newspapers of the City of Charleston, and that the publication shall be made in conformity with the resolutions heretofore adopted by this Legislature, for which service the proprietor of said paper shall be paid the sum of fifty dollars.

Resolved, That in each other district, where a gazette is published, the proprietor thereof shall receive the sum of twelve dollars and fifty cents, for publishing so much of the notice of elections, as relates to the district in which said gazette is published.

(Resolutions of 1838.)

Contingent Accounts.

Sec. 2. Every contingent account against the State, shall be lodged in the Comptroller's Office, at Columbia, on or before the third day of the annual session of the Legislature; and that it shall be the duty of the Comptroller to examine and report on the same to the Legislature, on or before the third Monday of each annual session, and no such account shall be considered or acted on by the Legislature, unless so examined and reported.

(1846, 11 *Stat.* 356 § 2.)

SOME USEFUL FORMS

INTENDED MAINLY FOR

Clerks and Sheriffs.

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192. Writ of *dedimus potestatem*—dower : inheritance or probate.
193. Certificates to be annexed to the writ in its execution.

Commissioner of Locations.

195. Warrant of survey.
196. Elapsed land.

Clerk acting as Ordinary.

Note.
194. Bond by Executor, purchaser at a sale of his testator's estate.

CERTIFICATES AND AUTHENTICATION OF RECORDS.

197–8. Authentication of judicial proceeding, by Clerk and Judge's certificates.
199. Authentication of record or office copy, from office, not appertaining to a Court.
200. Authentication of a Magistrate's attestation.
201. Certificate as to the records of a County Court.
202. " " " of a former District, now divided.
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204. Certificate by Commissioner of Locations.
" Certificate by Clerk, acting as Ordinary.
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SHERIFF.

DEPUTIES.

206–8. Forms of deputation, and distinction between various deputies.

RETURNS OF MESNE PROCESS.

210. Service of Sum. Pro.—copy delivered.
211. " " —copy left.
212. " writ of capias ad respond.—copy delivered.
213. " " " " —copy left.
214. Arrest under order for bail,—copy delivered.
215. " " " body held.
216. " " " bail bond given.
217. " " " prison bounds bond given.
218. " " " discharge under prison bounds, insolv't debtors' act.
219. " " " death in prison.
220. " " " discharge on supersedeas.

221. Arrest under order for bail—discharge by order of plaintiff.
222. " " " discharge upon deposit of money.
223. Two or more defendants :—and defendants in different districts.
224. One of several partners.
225. Non est inventus.
226. Tarde.
227. Languidus.
228. Languidus and non est inventus.
229. Rescue.
230. Injunction—stay of process.
231. Privilege of a member of the Legislature.
233. " " " " and N. E. I.
233. Privilege of a suitor, or witness in Court.
234. " " " " with copy served.
235. " " " " and N. E. I.
Note as to privilege of one engaged in the militia service, and of suitor or witness attending the Commissioner in Equity.
236. Subpœna writ—served—and N. E. I.
Note as to *service by copy left.*

SCIRE FACIAS.

237. Nihil.
238. Copy delivered.
239. Copy posted, of rule or Sci. Fa. to revive proceedings.

CORPORATION.

240. Copy delivered to President.
241. Copy delivered to Clerk at place of business.

RETURNS OF FI. FA.

242. Note and references.
Nulla bona.
243. Nulla bona to Fi. Fa. de bonis testat. si non de bonis propiis.
244. Payment by defendant in full.
245. Payment specially applicable to this case.
246. Part payment, and nulla bona, &c.
Note as to *payment by assignee.*
247—255. LEVY.
Upon lands—equity of redemption, undivided share—interest in remainder—slaves—articles in schedule.
Notes—*what a levy—what not liable: requisite description of the property.*

SALE AND APPLICATION OF THE PROCEEDS.

256—261. Sale—titles to another—older judgment, older executions, residue applied, &c.

DISPOSITION OF LEVY AND FURTHER LEVY.

262. Sale of part and discharge—land not defendant's.
263. Discharge by Plaintiff's directions.

264. After payment of older judgment and executions, rateable division.
265–6. Costs retained—balance applied—destruction, one negro died.
267. Negroes found to be mortgaged, and redelivered to defendant.
268. Destruction---negro drowned.
269. Remains for want of bidders.
270. Mortage older than this Fi. Fa.—levy transferred to another.
271. Articles not the property of defendant.
272. " exempt from sale by law.
273. " left with the defendant and not produced. *Note.*
274. Levy insufficient, and further levy.
275. Plaintiff's orders to wait.
276. Order of Court or Judge staying execution.
277. Subsequent returns after expiration of stay.
278. Application to this Fi. Fa. of money made in another.
279. Preceding Sheriff—neglect to shew disposition of levy, supplied.
280. Further levy; nulla bona.
281. Payment to landlord.
282. " tax collector.
283. " funeral expenses, &c.

RETURNS OF CA. SA.

284. Note and references.
Non est inventus.
285. Cepi Corpus---body held---satisfaction.
286. " money paid specially to this case.
287. " prison bounds bond, discharge under insolv't debtors', or prison bounds acts---supersedeas---death in prison.
288. " discharge by order of Plaintiff.
289. " " " and subsequent arrest--body held, satisfaction, prison bounds, &c.
Other returns, tarde, languidus, privilege, injunction, orders to stay.

RETURNS, BONDS, &c.—FOREIGN ATTACHMENT.

290. Note and references.
Neither goods nor garnishee found.
291. Lands and goods attached--no person in possession.
292. Notice on Court house door.
293. Goods attached in the hands of garnishee.
294. " " " " claimed on oath by garnishee as creditor.
Note as to the *nature of a garnishee's claim, and of property which can be attached in his hands.*
295. Goods attached in the hands of garnishee, taken into possession for want of claim on oath, or of bond.
296. Goods attached in the hands of garnishee, and held until attachment dissolved.
297. Goods attached in the hands of garnishee, until Clerk certified entry of special bail.
298. Goods attached in the hands of garnishee, until bond given to Sh'ff.
299. Goods attached in the hands of garnishee, until sale under order---balance of proceeds ready, after payment of a Fi. Fa.

Goods attached in the hands of garnishee, until rescue or distribution.
" " delivery to plaintiff or to assignees.
300. " " and bond given under the 1st sec. of Act of 1844.
301. Schedule returned by the garnishee.
302. Bond under 1st sec. of the Act of 1844.

THE SECOND SECTION OF THE ACT OF 1844.

303. Non est inventus.
304. Arrest and detention for want of bond.
305. Arrest and prison bounds bond, discharge, death, privilege, &c.
306. Arrest and bond taken.
307. Bond to the Sheriff, under 2d sec. of Act. of 1844.
308. Assignment of bond.

NOTICE AGAINST GARNISHEE FAILING TO MAKE RETURN.

309. Copy served.
" posted.
310. Bond to Sheriff, replevying goods attached: assignment.

ORDER IN TROVER.

311. Returns.
312. Bond.

BAIL.

313. Form of bail bond.
314. Assignment.

RENDER BY BAIL.

315. How made, when, &c.
316. Acknowledgment to be signed by party rendering.
317. Receipt to be signed by Sheriff.
318—319. Returns of render on mesne process.
320—321. " " on Ca. Sa.

HABERE FACIAS POSSESSIONEM.

322. Possession delivered.
323. Possession of an undivided share.
324. Fi. Fa. or Ca. Sa. returned.
325. No person came to point out land and receive possession.

BONDS OF INDEMNITY.

326. For selling goods.
327. For delivering goods and returning nulla bona.

PRISON BOUNDS BOND.

328. On mesne process.
329. On execution.

REPLEVIN.

330. Replevin bond.
331. Assignment.

WRIT OF REPLEVIN.

332. Goods replevied and writ served.
333. Elongata.
334. Property claimed.
335. Retorno habendo returned.
336. Withernam: writ of second deliverance---returned.

HABEAS CORPUS.

337. Body ready with the cause.
338. Languidus in prisona.
339. Jail burnt and escape.
Mode of serving the writ.

RETURNS TO RULE AGAINST SHERIFF.

340. Money made---proceedings to set aside judgment.
341. Rule by assignee---money applied to Fi. Fa. against assignor.
342. Short time, and notice of motion to set aside execution.

JURORS.

343. Summons for a juror.
344. Return of writ of venire facias---schedule with classes.

DOMESTIC ATTACHMENTS.

345. General directions.
346. Return of goods seized---no person in possession.
347. Held until replevied, sold, rescue, destruction.
348. Goods attached in hands of garnishee, and service of the garnishee.
349. Nulla bona and non est inventus.

SPECIAL EXECUTIONS.

350. Fi. Fa. upon recognizance forfeited---for fine---or on bastardy bond.
351. Militia executions.
352. Tax executions.

INJUNCTION BOND---NE EXEAT---BENCH WARRANT, 353---355.

SUBPŒNA AD RESP. IN EQUITY, 356.

ATTACHMENT FOR CONTEMPT, 357.

RULES, NOTICES, INTERROGATORIES, CITATIONS, &c. 358.

FOR THE CRIER.

359. Form of opening Court.
360. Form of adjourning Court.

SOME USEFUL FORMS

Intended mainly for Clerks and Sheriffs.

CLERK.—ENTRIES IN BOTH JOURNALS.

Caption. 1.

THE STATE OF SOUTH-CAROLINA.

At a Court of Common Pleas [*or* General Sessions] for the District of begun to be holden at Court-house, on Monday * Present the Honorable one of the Law Judges of the said State.

If the Clerk is required to certify a very formal transcript of any matter from the Journal. [a] 2.

(*As above to* *) and there continued by divers adjournments until day of aforesaid. Present the Honorable (&c.) On (*Saturday*) the day of aforesaid, the following order was made and entered [*or* entry was made] on the Journal of the said Court, to-wit: [*here insert a copy of the entry.*]

In witness whereof, I, D. H., Clerk of the said Court, have hereunto set my hand and affixed the seal of the said Court, at , this day (&c.) sovereignty and Independence of the United States of America.

(*Seal of office.*) D. H., C. C. P. *or* C. G. S.

If the Judge should not attend. [b] 3.

(*As in No.* 1 *to* *) No Judge being present, the Clerk of the said Court opened the Court, and —— † adjourned it until 10 o'clock to-morrow.

Next day. No Judge being present, the Court was opened by the Clerk, and adjourned until 10 o'clock to-morrow.

On the last day of the Term. The Court was opened by the Clerk, and no Judge being yet present, on this last day of the appointed term, [*or if at any time during the term the Clerk has received due notice that the Judge will not be present, say, commencing as in the beginning of this No. to* —— † due notice having been received by the Clerk, that the Honorable , one of the Law Judges of the State, whose term it is to preside at this Court, is *(ill of fever)* and that no Judge will attend] the Clerk, together with the Sheriff of the District, in the presence of Esquire, a Magistrate of the said District, drew in open Court the necessary Juries for the next regular term of the said Court, in manner and form as is prescribed by law, to-wit:

---

a See No. 35 for a less formal transcript.

b 13th Section Clerks' Act 1839, 11 Stat. 74.

1 Thum
2 turn

The panel of Grand Jurors,
A. B., C. D., &c. (24 *in all.)*
The panel of Petit and Common Pleas Jurors.
E. F., G. H., &c. *(48 in all for each week.)*
The Court was then adjourned by the Clerk until the Monday of *(the first day of the succeeding term.)*

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4. *Extra Court.*

When an extra Court is ordered by the Circuit Judge, his order is made and entered on the Journals of the regular term at which he presided; and the juries are then drawn for the extra Court as well as for the next regular term. 1825, 7 Stat, 329; 2 Rich. 534.

When a Judge fails to attend a regular Court, and an extra Court is ordered by the Court of Appeals, a jury for it must be drawn by the Clerk and Sheriff. 1843, 11 Stat. 254 § 5: 1839, 11 Stat. 74 § 13.

The Court of Appeals may also order an extra Court "for further dispatch of business." 1824, 7 Stat. 326 § 5; 1817, 7 Stat. 317 § 1, 2, 3. For such a Court it was provided, that the Jurors drawn at the preceding term should be summoned; and then Jurors for the next term be drawn at the extra Court; but the 13th Section of the Clerk's Act of 1839, probably made a change.

When Jurors are drawn by a Clerk and Sheriff, under an order made by the Court of Appeals in the case provided for by the Act of 1843, although a Court is not opened, an entry should be made in the Journals, thus:

THE STATE OF SOUTH-CAROLINA, }
District. }

[*Here copy the order of the Court of Appeals.*]

Under this order, D. H., Clerk of this district, and J. S., Sheriff of this District, on this day of at Court-house, in the presence of Esquire, a Magistrate of this district, drew a jury [*or* juries] for the said extra Court, in manner and form as is provided by law, viz:

Panel of Grand Jurors: [24 *if a Grand Jury is ordered.*]
Panel of Petit and Common Pleas Jurors: [48 *for each week.*]
And the said Clerk delivered to the said Sheriff, a proper venire [*or* venires] for the said jury [*or* juries] to be summoned to attend the said extra Court, at the time appointed in the order above copied.

Orders concerning a new Jury List. [a]

5. *Order for preparation of tickets:*

To be entered at the term next preceding the expiration of three years from the time when new tickets were last placed in the Jury box.

For the purpose of forming a new Jury list for this district, the Sheriff is directed to procure from the Tax-collector a copy of his last tax-returns (which the Tax-collector is required, without delay, to furnish to the Sheriff, when it may be demanded,) [b] and from the said returns the Sheriff, with the assistance of the Clerk, is required to transcribe upon tickets, each containing one name, the names of all

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a See note *c* to 36th Rule of Court: also, State v. Massey, 2 Hill 380; and note to No. 27. Nos. 39, 49.

b 1799, 7 Stat. 291.

persons who are by law qualified [a] to sit as Jurors in this district; and also upon other [b] like tickets, the names again written, of all of the persons qualified as aforesaid, who live within [*if for Charleston Dis trict*, say, "the City of Charleston,"] five miles of the Court-house: which tickets shall be ready to be placed in the Jury box at the next term. (Signed by the Judge.)

Entry at next Term, when tickets are placed in the Jury box. 6.

The Jury tickets prepared under the order made at the last term were placed in the Jury box, to-wit: those which included the names of all Jurors for the district, were placed in the division [c] numbered 1: that from them all Grand and Petit Jurors may be ordinarily drawn; and those which included the names of Jurors within [the City of Charleston, *or*] five miles of the Court-house, were placed in the division numbered 3, that from them all *tales* may be drawn.

The Jurors for the next term were then drawn from the division numbered 1, to be entered in the venires, summoned and impanelled as the law requires. [Signed by the Judge.)

If there should have been an omission to enter the first order at the right time, and tickets should have been prepared at the next term, without order, or under a verbal order then made, an entry to this effect may be made: 7.

The Sheriff having procured from the Tax-collector a copy of his last tax-return, and prepared new Jury tickets according to law, the tickets in the presence of the Court were placed in the Jury box, to-wit: those which included (&c. *as above*, No. 6.)

Each Journal should also contain (besides so much of the preceding matter as is applicable.) at every term holden, 8.

1. "The venires for this term were laid before the Judge." 93d Rule of Court.
2. Of the Grand Jurors summoned the names of those who appear: the names of defaulters and others who were excused: the names of other defaulters, and order of Sci. Fa. against them.
3. Foreman appointed, and Grand Jury sworn.
4. Of Petit Jurors, the same as concerning Grand Jurors.
5. Of Petit Jurors in attendance, Juries No. 1 and No. 2, and supernumeraries were drawn: Foreman appointed and Juries sworn.
6. Juries drawn for next term, 24 in panel of Grand Jury: 48 for each week in panel of Petit Juries: order for venires.
7. A roll of the Jurors and Constables for the term. (A copy of which is to be transmitted to the Comptroller General. 1839, 11 Stat. 74 § 14.)

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a Constitution of 1790. 1 Art. 4 Sec.; 2 Hill 280.

b 1768, 7 Stat. 203; 2 Mills C. R. 155; 2 Hill 384.

c The old Jury law of 1731, required six divisions in the Jury box; but the Act of 1799, which obliterated the distinction between Grand and Petit Jurors, and the repeal of all the provisions which have heretofore existed for special juries, and juries for special occasions drawn from the District Jury box, have rendered unnecessary more than four divisions, to-wit: 1. Into which the general tickets are put: 2. Into which they are transferred after having been drawn: 3. Into which the *tales* tickets are put; and 4. Into which they are transferred when drawn.

COMMON PLEAS JOURNAL.

Summary Process. [a]

9. *Decree by default: sum assessed by Clerk.* [b]

A..... B....., } Sum. Pro. on Note. R. S., Plff's Attorney.
v.
C..... D....., }

Balance after a credit, or when ever interest is calculated, but not up to the day of decree.

Let the plaintiff have judgment by the defendant's default, according to the Clerk's assessment for the sum of * sixty dollars with interest on sixty dollars, from the first day of January 1848, and costs.

Where no calculation is needed but inter't allowed.

* sixty dollars with interest thereon, from the first day of November 1847, and costs.

Where calculation is made to day of decree.

* seventy-three dollars (of which the principal sum, sixty dollars, will bear interest from this day,) and costs.

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10. *Decree by default upon proof: no interest allowed.*

A..... B....., } Sum. Pro. on account. R. S., Plff's Attorney.
v.
C..... D....., }

Let the Plaintiff have judgment by the defendant's default, according to the proof made, for the sum of forty dollars and costs.

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11. *Decree by default upon proof, when only part of the demand bears interest.*

A..... B....., } Sum. Pro. Note and account. R. S., Plff's Atty.
v.
C..... D....., }

When no calculation is made.

Let the plaintiff have judgment by the defendant's default, according to the proof for * seventy dollars, with interest on forty dollars, from the first day of January 1848, and costs.

Where calculation is made to a day prior to a decree.

* seventy-three dollars (of which forty dollars will bear interest from the 23d of March inst.) and costs.

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12. *Summary Process tried by the Judge.*

A..... B....., } Sum. Pro. Trespass. R. S., Plff's Attorney.
v.
C..... D....., }

After trial before the Judge, ordered that the Plaintiff have judgment for dollars.

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a Clerk's Act of 1839, § 3 1 cl., 11 Stat. 71; 1768, 7 Stat. 200 § 4.

b See Act of 1809, 7 Stat. 309; "Sum to be indorsed over his official signature on the process." Clerk's Act of 1839 § 29, 11 Stat. 78.

Summary Process tried by a Jury. 13.

A..... B....., }
v. } Sum. Pro. Trover. R. S., Plff's Attorney, E. F.,
C..... D....., } Defendant's Attorney.

On application of the parties [*or* of the plaintiff, *or* Defendant, *or* By order of the Judge,] this case was tried by Jury No. 1, *(repeating them if necessary to shew who they were,)* and the following verdict was rendered, to-wit: "We find, &c." according to which, let the plaintiff [*or* defendant] have judgment for (*amount found*) and costs.

Decree for defendant by the Judge. 14.

A..... B....., }
v. } Sum. Pro. Award. R. S., Plff's Attorney, E. F.,
C..... D....., } Defendant's Attorney.

After trial before the Judge, a decree was given for the defendant. Ordered, that the defendant have judgment for his costs.

Non suit. 15.

A..... B....., }
v. } Sum. Pro. Single Bill. R. S., Plff's Attorney,
C..... D....., } E. F., Defendant's Attorney.

Non suit ordered. Let the defendant have judgment for his costs.

Discontinued, settled, abated, &c. 16

A..... B....., }
v. } Sum. Pro. R. S., Plff's Att'y,—*or* Assumpsit—Issue
C..... D....., } docket, [*or* Sum. Pro. *or* other docket,] No. 27.

"Discontinued"—"settled"—"abated."

[According to the entry made on the docket, which disposes of the call, if no special order be drawn by the attorney and signed by the Judge.]

Enquiry and Issue Dockets.

Case transferred where no special terms are imposed.[a] 17.

No. (on docket.)

A..... B....., }
v. } Assumpsit, Non Assumpsit,
C..... D....., } R. S., Plff's Att'y. C. D., Deft's Att'y.

This case was marked "transferred" on the Enquiry docket. On motion of the defendant's attorney, the defendant has leave to vacate the order of judgment upon the ordinary terms.

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a See 2d Rule of Court.

18. *Various cases transferred under one general order.* [a]

No. — A. B. v. C. D.. Asst. R. S., Plff's Att'y. C. D., Deft's Att'y.
No. — E. F. v. G. H., Debt. G. H., Plff's Att'y. E. G., Deft's Att'y.

These cases were marked "transferred" on the Enquiry docket. On motion of the defendant's attorney, in every of them, the defendant in every one has leave to vacate the order for judgment upon the ordinary terms.

19. *Order of reference and Clerk's assessment.*

A..... B....., } Asst. Note. R. S., Plff's Attorney.
v. }
C..... D....., }

On the Enquiry docket—no appearance ; [*or*, On the Enquiry docket, the defendant's attorney, O. T., having withdrawn his appearance ; *or*, On the Enquiry docket, the defendant's attorney, O. T., having failed to plead ; *or*, On the Issue docket, the defendant's attorney, O. T., having withdrawn his plea ; Ordered, that it be referred to the Clerk to ascertain the sum actually due to the Plaintiff in this case, and that the plaintiff have leave to enter his final judgment accordingly. Whereupon the Clerk ascertained the sum actually due to be [one hundred and twenty dollars, whereof one hundred dollars, the principal sum will bear interest from this day. *or*, one hundred dollars with interest from first day of January 1847—*according to circumstances.* [b]] *See Sum. Pro. No.* 9.

20. *General order of reference.—Cases of various classes.*

In every one of the following cases, on motion of the plaintiff's attorney, it is ordered, that it be referred to the Clerk to ascertain the sum actually due to the Plaintiff in the said case, and that the plaintiff have leave to enter his final judgment accordingly. Whereupon the Clerk ascertains the sum actually due in every one of the said cases to be as below stated, viz :

Enquiry docket.

No. (*on docket*) 9.

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a See 11 Stat. 71.

b 1809, 7 Stat. 319 ; 1839, 11 Stat. 71 § 8, cl. 1 ; "Sum to be endorsed on the declation over the Clerk's official signature." 1839, 11 Stat. 78 § 29.

As to the mode of calculating interest on a note, made to bear interest before it becomes due, see Doig v. Cathcart, 3 Rich. 125. As to the calculation of interest on a bond which contains a stipulation for the annual payment of interest, see Duvall v. Sims, 1 Strob. 116 ; Singleton v. Lewis, 2 Hill 403; Gibbes v. Chisolm, 2 N. & McC. 38. Debruhl v. Neuffer. 1 Strob. 426; In debt upon judgment, the whole amount for which judgment was entered, principal, interest and costs, bears interest from the day of the entry : and this whether the original cause of action bore interest or not. Harrington v. Glenn, 1 Hill 79, and cases cited, overruling 2 Bay 193.

As to what are cases of liquidated damages under the Act of 1809, see Wilkie v. Walton, 2 Speer 477, and cases cited.

For evidence to be taken by the Clerk in making his assessment. See 2 Hill 556.

A judgment is a liquidated demand, and may be referred to the Clerk. 2 Speer 573, and cases cited.

As to interest on accounts : See 1 Speer 209, 249.

A..... B.....,
v. } Assumpsit. Note. R. S., Plff's Attorney.
C..... D.....,

No appearance; sum ascertained, one hundred, &c.

No. 14.

E..... F.....,
v. } Debt on single bill. R. S., Plff's Att'y. O. T., Deft's Att'y.
G..... H.....,

The defendant's attorney having withdrawn his appearance: sum ascertained, one hundred, &c.

No. 23.

K..... L.....,
v. } Debt on Judg't. R. S., Plff's Att'y. O. T. Def. Att'y.
M..... N.....,

Defendant's attorney having failed to plead, sum ascertained, one hundred dollars, &c.

Issue Docket.

No. 36.

O..... P.....,
v. } Asst. on Bill of Exchange. R. & P., Plff's Att'ys.
R..... S....., O. T., Deft's Att'y.

The defendant having withdrawn his plea, sum ascertained, one hundred, &c.

General order of reference.—Particular class—no appearance. 21.

In every one of the following cases * [upon the Enquiry docket for default of appearance] on motion of the plaintiff's attorney, it is ordered, *(as above No. 20.)*
particular class---plea withdrawn.
[*As above to* *) [upon Issue docket, pleas having been withdrawn] *and so of other classes.*

Final judgment ordered.[a] 22.

A..... B.....,
v. } Debt on penal bond. A. C., Plff's Attorney.
C..... D.....,

On Enquiry docket, No. — no appearance.
Id. appearance withdrawn.
Id. no plea filed.
On Issue docket, No. — plea withdrawn.

Ordered, that plaintiff have leave to enter his final judgment for the penalty of the bond.

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a Martin v. Malony, 1 Rich. 272.

23. *Issue tried.*

No. 49.

A..... B.....,
v. } Assumpsit. Non Assumpsit.
C..... D.....,
R. S., Plff's Att'y. T. B., Deft's Att'y.

Jury No. 1, [as above organized, *or*, to-wit: O. B., Foreman, A. K. &c.] was charged with the trial of the issue in this case, and returned the following verdict, viz: We find, &c.

O. B., Foreman.

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24. ***Changes of Jurors:*** [a] ***adjournments, &c.***

O. T. being absent, C. R. supernumerary was substituted in his room on Jury No. 1.

E. D. and G. H., who were challenged in the case of A. B. v. C. D., resumed their places on Jury No. 1, on room of those who had been substituted for them. *See No.* 28.

25. A..... B.....,
v. } Assumpsit. Non Assumpsit.
C..... D.....,
R. S. Plff's Att'y. T. B. Deft's Att'y.

In this issue before Jury No. 1, the case was opened and the plaintiff's evidence in chief heard.

The Court adjourned until 10 o'clock, A. M. to-morrow.

C. C. P.

26. A. B. v. C. D. The evidence in defence and part of the evidence in reply was heard. The Court adjourned until 10 o'clock, A. M., to-morrow.

27. A. B. v. C. D. Assumpsit.

After the close of the evidence, argument was heard. The Court adjourned until, &c.

Further argument was heard.

After close of the argument, the Jury, No. 1, was charged with the case and retired.

Jury No. 1, [b] returned with the following verdict, &c.

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a 11 Stat. 71 § 8 cl. 1.

b It is not imperative upon the Judge to send cases to the two juries in turn. 2 Rich. 190.

As to the misconduct of Jurors alleged as a ground for a new trial: see 2 Rich. 122. As to improper tampering with a jury by a party or his friend. See Cohen v. Robert 2 Strob.

When a jury has returned with a verdict, the Clerk after calling the names of the Jurors, asks solemnly, "Gentlemen, have you agreed upon your verdict:" The Foreman replies, "Yes," and hands the record. The Clerk reads the title of the case and the verdict—calling the attention of the Court, if any sum be in figures and not in letters, or if there be any other defect in form; and then, if no objections prevail, the verdict is recorded. If a jury be polled, every Juror being called is separately asked whether he agrees to the verdict: concerning this, see No. 89 and note *c.* to 36 Rule of Court.

The Plaintiff submitted to a non suit, with leave to move to set it aside.

On motion of E. M., the defendant's attorney, a non suit was ordered.

E.....F....., } Debt. Nil debet, or special plea, *(as the case may be.)* 28.
v.
G.....H....., } A. B., Plff's Attorney. C. D., Deft's Attorney.

This issue was referred to Jury No. 2: N. R., supernumerary Juror, was substituted in room of R. T. absent: L. G. was excused, and R. W. supernumerary substituted: A. R. was challenged for cause by the plaintiff, and W. O. substituted: O. R. and C. T. were peremptorily challenged by the plaintiff: C. G. and E. F. by the defendant; and in room of these four last named, L. A., M. E., P. T. and G. S., being drawn from supernumeraries,[a] were substituted. Jury No. 2, was then composed as follows:

1. A. R., Foreman.
2. E. F.
3. G. S.
4. C. D., &c.

After some progress the Court adjourned, &c.

Confessions before Clerk.[b] 29.

Form of entry in the Journal of C. P. the first day of the term

The records of the confessions of judgment made before the Clerk, since the first day of the last term, were read by the Clerk, in open Court, from the "book of confessions before Clerk." [Page — to page —, including the following cases, to-wit:

A. B. v. C. D. Note.
E. F. v. G. W. Bond.]

The matter in brackets is not indispensable.

Confession of judgment made during Court.[c] 30.

A. B. v. C. D. Debt. R. S., Plff's Attorney.

The defendant acknowledges the action and confesses judgment in these words, "I confess judgment for the sum, &c."

Order for judgment of non pros. 31.

A. B. v. C. D. Debt. R. S. Plff's Att'y. Writ lodged —— day ——

The plaintiff having failed to file his declaration in due time, on motion of K. M., defendant's attorney, ordered that the defendant have leave to enter judgment of *non pros.*

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a State v. Kleinback, 2 Speer 418.

b 18th Sec. Clerk's Act 1839, 11 Stat. 75; 1821, 6 Stat. 160; 3 Hill 225.

c. Confession of judgment made in a case pending, or entered during Court, required to be on the Journal by 1st clause 8th section of Clerk's Act of 1839, 11 Stat. 71; 11th Rule of Court; 2 Speer 302.

For the cases in which the Clerk may grant an order for judgment of *non pros.*, and for the effect of such order, see the cases referred to in Rules of Court, 2d and 67th, and the authorities cited in those cases; also, 1 N. & McC. 38; 1 Hill 216: 3 McC. 31; 2 Rich. 334.

32. *Leave of further time to declare.* [a]

A. B. v. C. D, Assumpsit.

On motion of K. L., Pl'ff's Att'y, [and by consent of Z. Q., Deft's Att'y, *or*, and after argument by him, and Z. Q. Deft's Att'y,] Ordered, that the plaintiff have leave of further time until the first Monday of March next, to file his declaration.

33. *Leave to plead double.* [b]

A. B. v. C. D. Debt.

On motion of M. O., Deft's Att'y, ordered that the defendant have leave to plead double.

34. *Rule of reference to Arbitrators.* [c]

A. B. v. C. D. Debt.

On motion of K. L. Plff's Att'y, and by consent of M. O. Deft's Att'y, ordered, that this case be referred to the arbitrament of O. T., G. K., S. W. and C. V., and of a fifth arbitrator whom a majority of these four shall choose: and that the award which the five arbitrators, or a majority of them may make and sign, shall be returned to become the judgment of the Court.

35. *Order for Survey.*

A. B. v. C. D. Trespass to try Titles.

On motion of D. D., Plff's Att'y, [and by the consent of R. T., Deft's Att'y,] ordered, that a rule of survey do issue, directed to — [A S., joint surveyor, *or*, to A. S. on the part of the plaintiff, and N. C. on the part of the defendant,] requiring him [*or* them] to survey and locate the land in dispute, and such adjoining lands as may be necessary, and to return a plat [*or* plats] thereof, containing such representations as may explain the matters of controversy, to be used in evidence on the trial.

In preparing the rule of survey to be served upon the Surveyor, let the Clerk make a copy of the above order, or such similar order as may be required by the Judge; prefixing, "South-Carolina, ——— District. In the Common Pleas," and subjoining, "By order of the Court. D. H., C. C. P." To this should be annexed the 45, 46 and 47 Rules of Court for the information of the Surveyors. See No. 2.

36. *Order for sale of goods attached.* [d]

A. B, v. C. D. Attachment.

It appearing that the Sheriff has in his possession certain goods and chattels of the defendant, to-wit: a negro man Isaac, &c., which have

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a See 67th Rule of Court. For cases in which a plaintiff in Sum. Pro. will be required to declare, see 2 Speer 631; 1 Bail. 121; 1 McC. 490.

b Stat. Ann, c. 20 § 4. 2 Stat. 433. Hext v. Jarrell, 2 Strob.

c See 61st Rule of Court. If power of umpirage be given, the rights and duties of an umpire, and the proper course of proceeding, should be carefully considered.

d See 1744, 3 Stat. 619 § 7; 1844, 11 Stat. 291 § 4.

been attached in this case, and that a sale is likely to be more advantageous to all parties than any other course, which under the circumstances can be taken; on motion of E. L., Plff's Att'y, it is ordered, that the Sheriff after due advertisement, do sell the goods aforesaid, at the Court-house of his district on the first Monday of next, (or some succeeding Monday if there be cause for necessary delay:) and that the proceeds of sale, after deduction of the necessary expenses of sale, be paid into Court to abide the further order thereof.

Order for payment and delivery of moneys, goods, &c. to the Plaintiff.[a] 37.

A. C. v. C. D. Attachment.

The plaintiff having entered final judgment in this action, it is ordered that [the money in Court which arose from a sale heretofore ordered, and] the moneys, goods, chattels, debts and books of account which [were attached in the hands of E. F. garnishee and which] are now in the hands of the Sheriff, be paid and delivered into the hands of A. B. the plaintiff, the same being first inventoried and appraised by E. M., R. H. and S. B., or any two of them: the said plaintiff before any such payment or delivery to him, having entered into recognizance with two good sureties *(payable to the State)* in double the value of the goods attached as aforesaid, that the moneys, and the appraised value of the goods and chattels, and also the debts and books of account, which shall be paid and delivered to him, shall be forthcoming in case the said C. D. the absent debtor, shall appear in Court, within the time allowed by law and discharge himself of the demand of the said A. B. against him: and if the said C. D. shall not appear as aforesaid, that he the said A. B. will render and deliver into the hands of the Clerk of this Court the residue of all such moneys, goods, chattels and debts, and said books of accounts, after payment and satisfaction of his judgment entered as aforesaid: which said residue shall be subject to the order of this Court. *(See Nos.* 125 & 127.*)*

Order for appointment of Assignees under the Attachment Act of 1844.[b] 38.

A. B. v. C. D. Attachment.

The return of the Sheriff [and of E. F., Garnishee] having been heard, it is ordered, that M. D. and P. S. be appointed assignees, according to the provisions of the Act of the General Assembly passed A. D. 1844, entitled "an Act to amend the attachment laws of this State:" and that upon such assignees entering into recognizance, with two good sureties, each in the sum of one thousand dollars, in manner and form as by the said Act is required, they shall have such rights and powers and be subject to such duties, as by the said Act are declared.

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a 1744, 3 Stat. 618 § 3; 1844, 11 Stat. 291 § 4.

b 11 Stat. 291.

Rule and Attachment for Contempt.[a]

39. *Order for payment of money by Garnishee in Attachment.*[b]

A. B. v. C. D. Attachment.

It appearing by the return of E. F., Garnishee in this case, (as the same has been corrected and amended by the verdict found upon the issue which was made on the suggestion contesting the said return,) that the sum of one thousand dollars and a gold watch of the proper goods and chattels of C. D. the absent debtor, were attached in the hands of the said E. F., on motion of E. R., Plff's Att'y, it is ordered, that the said E. F. do forthwith upon receiving notice of this order, pay and deliver the said sum of money and the said gold watch to the Clerk of this Court, (to abide further order,) and that unless the said E. F. do pay and deliver as above ordered, he do shew cause on next, why he should not be attached for a contempt of the Court.

40. *Order for Attachment for Contempt.*

A. B. v. C. D. Attachment.

A copy of the order heretofore made, requiring E. F., Garnishee, to pay and deliver to the Clerk of this Court, the sum of one thousand dollars and a gold watch, of the proper goods and chattels of C. D., the absent debtor, which were attached in his hands, having been served upon the said E. F., and he not having complied with the said order, and at this time, when by the said order he was required to shew cause, shewing no (sufficient) cause to the contrary. On motion of E. R., Plff's Att'y, it is ordered, that an attachment do issue against the said E. F. for his contempt in refusing to obey the order aforesaid.

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41. *Rule to shew cause why satisfaction of a judgment should not be entered.*

A..... B....., } In Common Pleas. District.
v. } No. Roll 3763. Judgment entered day of
C..... D....., } 1840, for $500 with interest from and costs.
R. S.. Plff's Attorney.

On motion of E. R., Attorney in behalf of the defendant, ordered, that E. F. who is the administrator of the said A. B. now deceased, do shew cause in this Court on day next, why satisfaction of this judgment should not be entered.

To be served on the "Plaintiff, his legal representatives, or his or their attorney."—1817, 6 Stat. 61.

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a This is a form of proceeding much used in the English practice in cases where we have substituted a Fi. Fa., as in enforcing awards; making security for costs available, and the like. In cases where a real plaintiff becomes answerable for the costs of a nominal plaintiff, whose name he has used, in orders against garnishees and other such cases, in which the duty of payment and amount to be paid are clear, if no new matter of excuse can be urged, it is still a convenient and effective mode of obtaining summary justice.

b See Sherman v. Cohen, 2 Speer 529; 1 Rich. 457; 2 Strob.

Order for entry of satisfaction of judgment. 42.

A..... B....., } In the Com. Pleas. District. No. Roll 3763.
v.
C..... D....., } Judgment entered day.

It appearing by the Sheriff's return, that a copy of the rule to shew cause why satisfaction of this judgment should not be entered, was on day delivered to E. F., and the said E. F. having failed to attend at this time which by the said rule was appointed, and it appearing from affidavits and evidence adduced on the part of C. D., the defendant, that the said E. F is administrator of the said A. B., now deceased, and that the said judgment has been fully paid, on motion of E. R., in behalf of the said defendant, it is ordered, that the Clerk of this Court, do enter satisfaction on the said judgment.

(See Nos. 169, 168, 44.*)*

Like order as to a mortgage. 43.

N..... .P....., } Mortgage of a tract of land called Cloburn, con-
to } taining 500 acres, situate on Flat Creek in this dis-
S..... R....., } trict, and of ten slaves, Peter, &c., to secure the payment of three notes, to-wit: one for dated second for dated third for dated : which mortgage is dated 10th June 1840, and recorded in the office of the Register of Mesne Conveyances for this district, on 5th October 1841, Book K. 473.

S. R., the mortgagee, having been served with a rule to shew cause why satisfaction should not be entered on this mortgage, and now attending —* but shewing insufficient cause, and it appearing from affidavits and evidence adduced in behalf of N. P., the mortgagor, that the mortgage aforesaid, and the sums of money secured thereby, have been fully paid, on motion of E. L. in behalf of the said N. P., it is ordered, that the Clerk of this Court, *ex officio* Register of Mesne Conveyances, do enter in the Registry where the said mortgage is recorded, satisfaction thereon. *(See No.* 187.*)*

Issue thereon ordered, verdict and order. 44.

(As in No. 43 *to* *) and shewing cause, concerning which it appears that matters proper for the decision of a Jury are involved: at the request of the said S. R. the same is submitted to a Jury. And Jury No. 1, (with these changes, A. and L. substituted in room of E. and P. who were challenged peremptorily on the part of the said S. R., and O. and W. substituted in room of M., who was challenged for cause by the said N. P. and Q. who was absent) having been sworn to try whether the said mortgage is fully paid, and after hearing evidence and argument, having returned the following verdict, to-wit: "We find that the said mortgage is fully paid." On motion of E. L. in behalf of N. P., it is ordered, [*As in No.* 43.] *(See No.* 45.*)*

The various orders, 31 to 44, both inclusive, must be signed by the Judge and copied. These forms are intended only to shew how in suitable cases, such orders might be drawn and entered.

45. *Collateral issues, and issues for the trial of special facts.* [a]

These issues are often tried—sometimes made up by the parties of right, sometimes ordered by the Court: sometimes being in writing, and of regular form, under a suggestion and pleading thereto, sometimes being merely oral.

In these the plaintiff cannot be nonsuited. 3 Rich. 210 See 1 Speer 329.

The Act of 1846, 11 Stat. 359, directs a summary issue as to the question of a Sheriff's diligence upon a rule against him: and the Act of 1817, 6 Stat. 61, directs a summary issue to try whether a judgment or mortgage has been satisfied. See 3 Rich. 220 and No. 44.

Cooper v. Scott, 2 McMul. 150, gives an instance of an issue ordered upon a Sheriff's return to a rule. See also Taylor v. Easterling, 1 Rich. 310. Maddox v. Williamson, 1 Strob. 23, an issue ordered to try the validity of an assignment, under which money in the Sheriff's hands was claimed. Posey v. Underwood, 1 Hill 262, an issue to try the validity of a judgment. Haigler v Way, 2 Rich. 326, an issue to try whether the defendant was an infant when judgment was rendered against him. Issues upon the returns of garnishees, (See 1 Strob. 239) and those upon allegations made against the petition, of one claiming the benefit of the insolvent debtor's or prison bounds acts, (see Schroder's case 2 Strob.) are prescribed by statute and regulated by many decisions.

Concerning affidavits and the form of proceeding for leave to file a suggestion, see 1 Rich. 3; Rice 268; 1 McMul. 66

Issues as to *caste* are frequent; when they arise under proceedings in prohibition, or concerning one who is a party to a record, they are in writing and somewhat formal.—(For the leading cases, see State v. Davis, 2 Bail. 558; State v. Scott, 1 Bail. 270; State v. Cantey, 2 Hill 614; State v. Managers of Elections for York, 1 Bail. 215; Miller v. Dawson & Brown, Dud. 174; and Ambrosia Belmont's case, 2 Strob. The person of color should be exhibited in Court, if it be required. 1 Speer 268.) But when such an issue arises as to a person offered as a witness, and objected to for color, it is usually presented in a summary and informal manner, and the evidence of its trial and result, should plainly appear in the Journal. Thus:

A..... B.....,
v. } Assumpsit.
C..... D.....,

In the trial of this case, E. F. was offered as a witness on the part of the defendant, and objection on the part of the plaintiff having been made, that the said E. F. was a person of color, incompetent to give testimony in Court the Judge, not having decided upon inspection, ordered an issue to try the fact involved in the objection aforesaid: whereupon the Jury [charged with the case aforesaid, *or*, No. 1, *or*, which rendered the last verdict, with these changes, to-wit: that O. P. and L. R. were drawn and substituted in room of E. D. and S. B. who had been challenged on the part of the plaintiff,] was sworn to try the said issue—and after hearing evidence and argument returned the following verdict.

"We find that E. F. is a person of color, incompetent to give testimony."

"We find that E. F. is a free white man."

"We find that E. F. is a free indian in amity with this government, and is competent to give testimony in Court."

"We find that E. F. is so descended from indians in amity with this government, as to be competent to give testimony in Court."

"We find that E. F. is a free person, and has no such admixture of African blood, as to be incompetent to give testimony in Court."

46. The Common Pleas Journal must also contain "copies of all orders passed, or motions granted, and other matters specially ordered by the Court to be entered," as well as the matters in No. 8. See 11 Stat. 71.

For orders in case of an insolvent debtor, see Nos. 137, 139.

For orders in naturalization, see No. 178.

For orders in escheat, see No. 182.

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a See No. 66 and Notes to 85 and 90.

General Sessions Journal. [a]

Bills given out. 47.

The State v. A. B. Murder.

The State v. C. D. Grand Larceny.

The State v. E. F., G. H. & L. M. Riot and Assault and Battery.

Bills of indictment in these cases were given out to the Grand Jury.

Order for bringing up a prisoner. [b] 48.

The State v. A. B. Murder.

O. M., a witness in behalf the State, being in jail for want of recognizance with security, it is ordered, that he be brought into Court to testify before the Grand Jury.

(Signed by the Judge.)

Findings of Grand Jury. [c] 49.

The Grand Jury returned bills as follows:

The State v. A. B. Murder.

A true bill. S. L. Foreman.

The State v. C. D. Grand Larceny.

A true bill. S. L., Foreman.

The State v. E. F., G. H., and L. M. Riot and Assault & Battery.

The first count not a true bill: the second count a true bill as to E. F.: not a true bill [d] as to G. H. and L. M. S. L., Foreman.

Order of Commitment. 50.

The State v. A. B. Murder.

Ordered, that A. B, who has heretofore been at large on bail, be committed to close custody.

(Signed by the Judge.)

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a See No. 8.

b In every case of bringing up a prisoner, committing or remanding one, an order signed may be useful in obtaining the turnkey's fees.

c When a Grand Jury is ready to make any presentment, the Clerk calls over the names of the Jurors and demands of the Foreman in their presence, *Have you any bills to present?* Then, when the bills have been disposed of, or if no bills be presented, (and always before the Jury is dismissed.) *Have you any further presentment to make?* Any presentments made must be read by the Clerk in open Court.

The Foreman hands the bills to the Clerk, and the Clerk reads the title of each case and what the Jury have written: taking care that the finding be written on the indictment. The Clerk may then ask, *Gentlemen, you agree that the Court shall amend matter of form, altering no matter of substance?* To which the Foreman may reply, *Yes.* This, not usually done in this State, is always supposed to have been done, (see 2 McC. 301; 1 Bail. 65,) and is always done in England. 1 Chit. Cr. Law 325.

d. It is usual to say *No Bill:* but *not found*, or *not a true bill*, is the form prescribed in every book of criminal law The Grand Jury cannot find part and ignore part of the same count. Finding not signed by the Foreman, held good. 1 N. & McC. 256.

51. *Additional Constables.*

The Court directed that the Sheriff should have eight Constables in attendance upon the Court for this and the next three days, and the following were appointed, viz :

52. *Adjournment.*

The Court adjourned until 10 o'clock, to-morrow.

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53. *Arraignment, (see No. 85,) not guilty—day assigned.*

The State v. A. B. Murder.

The prisoner is put to the bar and arraigned, and upon his arraignment pleads — * not guilty, and for trial puts himself upon God and his Country. Thursday next is assigned for his trial.

54. *Arraignment—plea of guilty. (See No. 85.)*

(*As in No. 53 to* — *) guilty. After admonition from the Court, he persists in his confession of guilt, and it is ordered that his plea of guilty be recorded. He is remanded for sentence.

Present tense.—It has been held matter of error that *in the record* these various proceedings were stated in the past and not in the present tense. 2 Saund. 393 n.; 1 T. R. 320.

55. *On Bail—arraigned—non cul.—put on trial—(See No. 86)—challenges—Jury—adjournment.*

The State v. C. D. Grand Larceny.

The accused having been upon bail appears at the bar, and is arraigned—pleads not guilty, and for trial puts himself upon God and his country : expresses his readiness to come to trial immediately, and is put upon his trial.

After various challenges, the following Jury is formed, viz :

1. N. G., Foreman ; 2. H. I., &c. This Jury is charged with the trial. After some progress made, the Court adjourned, &c.

56. *Evidence—summing up and adjournment.*

Wednesday, 10th March 1848.

The Court meets according to adjournment.

The State v. C. D. Grand Larceny.

The evidence being closed, and argument heard, his Honor the Judge sums up, and the Jury retires.

57. *Verdict—surrender by bail—commitment.*

Thursday, 11th March 1848.

The State v. C. D. Grand Larceny.

The Jury returns the following verdict. Guilty, N. G., Foreman. (See note No. 27 and No. 89.)

His bail L. O., having surrendered the defendant, Ordered, that the said C. D. be committed to close custody.

Challenges—tales—verdict—(See No. 89)—remanded. 58.

The State v. A. B. Murder.

The prisoner is put upon his trial. After various challenges, and drawings of *tales*, [a] the following Jury is formed, viz: 1. &c.

This Jury is charged with the trial, and returns the following verdict, "Guilty." L. O., Foreman.

The prisoner is remanded for sentence.

Misdemeanor—changes in jury—(See Nos. 24—28)—verdict. 59.

The State v. E. F. Assault and Battery.

Of Jury No. 1, E D. is excused from sitting, E. L. being a kinsman of defendant is challenged for cause on the part of the State, and G. T. and T L., supernumeraries substituted: E. P. and M. J. are peremptorily challenged by the defendant, and A. R. and S. B. drawn from the supernumeraries in their room. The Jury then consisting of, 1. E. M., Foreman, &c., is charged with the trial of the issue, and return the following verdict ——* "Guilty."

Acquittal and discharge. 60.

*(As in No. 59 to — *)* "Not Guilty." Whereupon, it is ordered, that the defendant go thereof without a day.

Sentence for misdemeanor. Imprisonment and fine. Security for good behavior and the peace. 61.

The State v. E. F. Assault and Battery.

The defendant appearing to receive sentence, (1) let the defendant [*or*, (2) It is ordered, that the defendant, *or* (3) It is considered that the defendant] be imprisoned three months, [to commence at the expiration of the imprisonment to which he has been sentenced in the case next preceding,] and be fined one hundred dollars: and that before his discharge from imprisonment, he enter into recognizance, himself, in the penalty of one thousand dollars, and two sureties, each in the penalty of five hundred dollars, with condition that for twelve months he be of good behavior and keep the peace towards all the citizens of this State, and especially towards the prosecutor N. R. and his wife E. R.

Demand why sentence of death should not be passed. (See No. 90.) Nothing said---judgment to be hanged---prisoner remanded. 62.

The State v. A. B. Murder.

It being solemnly demanded of the prisoner at the bar, if he hath any thing to say why sentence of death should not be passed upon him, he saith nothing farther unless as he had before said. Wherefore, it is considered by the Court, (and pronounced as the judgment of the law,) that the said A. B. be taken hence to the place whence last he came, there to be kept in close and safe custody until Friday day of next: and that on that said Friday, between the hours of ten in the

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a See the State v. Williams, 2 Hill 384. No. 86.

1. 2. 3. Of these forms the first is easiest and most common: the third most technical.

forenoon and two in the afternoon, he be taken to the place of public execution in this district, and then be hanged by the neck until his body be dead. And may God have mercy on his soul.

The prisoner is remanded for execution.

Benefit of Clergy.

63. *Demand why not judgment, (See No. 90.)—Prays benefit of Clergy---allowed. To be imprisoned and whipped.*

The State v. C. D. Grand Larceny.

It being solemnly demanded of the prisoner if he hath any thing to say why the Court should not proceed to judgment and execution against him, he prayeth that the benefit of Clergy may be allowed to him — * and it is allowed: whereupon it is considered by the Court here, that the said C. D. be imprisoned for six months, and on the first Monday of next, at the public whipping post for this district, (at the market place) receive thirty-nine lashes on his bare back.

64. *Counter plea filed---Judgment prayed.*

(*As in No.* 63 *to* — *) But ——, Esquire, the Solicitor in behalf of the State, filed a counter plea, stating that he the said C. D. was not entitled to the benefit of Clergy, because at &c. he was indicted for that : thereupon he was convicted and prayed that the benefit of Clergy might be allowed to him, and the same was allowed accordingly, and it was considered by the Court last mentioned, that he the said C. D. should be imprisoned, &c. and that the said C. D. who stands convicted of Grand Larceny [a] at the Court of General Sessions now here holden, is the same person who was convicted of manslaughter at &c. on &c., as aforesaid, and not another and different person: wherefore since the said C. D. hath already been admitted to his Clergy, the said ——, Esquire, for the State prayeth judgment of the Court here, and that the said C. D, may receive judgment to die according to law. — †

65. *Inspection: Certificate: (27 § Clerk's Act* 1839, 11 *Stat.* 77, *See No.* 84,*) no denial: sentence of death.*

(*As in No.* 64 *to* — †) And because by the inspection of the record, [*or*, by the certificate of D. H., Clerk of the Court of General Sessions and Common Pleas for the district of where the record of conviction set forth in said counter plea is kept,] it appears that the said C. D was convicted and did receive the benefit of Clergy as set forth in the said counter plea, and that he is the same person, and this he the said C. D. does not deny: therefore it is considered that the benefit of Clergy be not allowed to the said C. D.: but that he be taken hence, &c. (*As in No.* 62.)

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a See Acts 1833, 6 Stat. 489; 1834, 6 Stat. 503; 1845, 11 Stat. 341; and case 2 Rich. 422.

Answer to counterplea. Nul tiel record, and identity denied. Jury ordered. Changes of Jury. Verdict. Clergy denied. Sentence of death. 66.

(As in No. 64 to — †) To this counter plea the prisoner pleads *nul tiel record*, and denies that he is the person named in the said counter plea, and for the State, the Solicitor aforesaid joins issue thereupon. Whereupon, for the trial of the said issue, a Jury is ordered. Of Jury No. 2, E. T. and M. R. are challenged for cause by the State; A. C. and G. T. challenged for cause by the prisoner, and O. H. and J. D. challenged peremptorily by the prisoner, and a Jury is formed consisting of (1. &c.,) who, having been sworn to speak the truth of and concerning the matters in issue,[a] and having heard the said record of conviction [*or*, the said certificate of the said conviction] and the testimony of witnesses upon oath in open Court, do say upon their oaths that the prisoner is the same identical C. D. in the said record and conviction [*or*, in the said certificate of conviction] named, who on, &c., at &c., was convicted of and then and there received the benefit of Clergy, as in the said counterplea is alleged. Therefore, it is considered that the benefit of Clergy be not allowed to the said C. D., but that he be taken, &c. *(As in No.* 62.)

See No. 45 and note to No. 85, concerning peremptory challenges on the trial of collateral issues.

Oath of Juror on trial of identity. 67.

You shall well and truly try whether [the prisoner at the bar was convicted of at C. H. in this State, on : and whether he is the same person who then and there was tried and convicted and received the benefit of Clergy :] and a true verdict give according to the evidence. So help you God!

Varying the matter between brackets, the same form of oath will serve for the trial of any fact collaterally presented.

Entries when a prisoner is brought up to receive award of execution, or assignment of new day, where sentence of death has before been passed upon him, but not been executed at the day appointed. See No. 92.

Recital of conviction and judgment. Solemn demand. 68.

The State v. A. B. Murder.

The prisoner having *(as it is said,* [b]*)* been convicted at term of this Court of murder, and sentence of death having then been passed upon him, *(as it is said,* [b]*)* is now by the Sheriff (under the warrant of——) put to the bar, and it being solemnly demanded of him if he hath any thing to say why the Court should not proceed to award execution of the judgment before pronounced against him —— *

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a See oath of Jury, No. 67.

b To be inserted if the question of identity be found in favor of the prisoner.

69. *Award of execution.*

(*As in No.* 68 *to* — *) saith nothing. Therefore, it is considered, that execution be done upon the said A. B. the prisoner, according to the said judgment: and that he be taken hence to [the place whence last he came,] (the common jail of this district,) there to be kept in close and safe custody until, &c. (*As in sentence of death, No.* 62.)

70. *Identity denied---issue joined.*

(*As in No.* 68 *to* — *) saith that he is not the person named in the record of conviction, and the judgment pronounced at term as aforesaid: and in behalf of the State, the Solicitor saith that he is the identical same person so named in the said record; and issue is joined thereupon. Wherefore for the trial of the said issue, &c., (*As in No.* 66, *leaving out what relates to the benefit of Clergy.*)

71. *Pardon pleaded,* [a]

(*As in No.* 68 *to* — *) saith that he hath been pardoned of the said (murder and) felony whereof he was convicted and sentenced as aforesaid, and produces the pardon of his Excellency Governor of this State: dated and under the seal of the State:— †

72. *Pardon allowed—discharge.*

(*As in No.* 71 *to* — †) Whereupon all and singular the premises being seen and by the Court here understood, it is considered that the said A. B. be discharged and go thereof without a day.

73. *Condition of pardon: imprisonment, then discharge.*

(*As in No.* 71 *to* — †) made upon condition that he be imprisoned, &c. Whereupon it is considered that the said A. B. be imprisoned, &c., and afterwards go thereof without a day.

74. *Replication—condition: broken—award of execution prayed.*

(*As in No.* 71 *to* — †) but Esquire, the Solicitor in behalf of the State, saith that the said pardon was granted upon a condition inserted therein, that the said A. B. should, within two months from the date of the said pardon, depart from the limits of this State, and not return to the same afterwards: and that, in violation of the said condition, the said A. B. having departed from the limits of this State, did afterwards, to-wit: on at return to the said State, and was within the limits thereof: Whereupon, the said Esquire, prayeth award of execution, that the said A. B. may die according to the judgment of the law pronounced against him as aforesaid. — ‡

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[a] If a pardon be produced in Court, it should be kept by the Clerk, and filed as a part of the record in the case.

If a pardon be produced to a Sheriff, it is in the nature of a *supersedeas*, and sometimes of a precept, and should be kept by him as his warrant for doing what it directs, and be returned to the Clerk to be filed, as the Sheriff's return of the reason why the order of the Court was not obeyed.

No denial—execution awarded.

75.

(*As in No.* 74 *to* — ‡) And this the said A. B. cannot deny. Whereupon it is considered, that execution be done upon the said A. B. the prisoner, according to the judgment aforesaid: and that he be taken, &c. *(As in No.* 62.*)*

Breach denied. Issue. 76.

(*As in No.* 74 *to* — ‡) And to this the said A. B. saith, he did not violate the condition of the pardon aforesaid, in manner and form as the Solicitor hath alleged, and prays that inquiry thereof may be had by the country. And the said Esquire, Solicitor doth so likewise. Wherefore, for trial of the issue thus joined, a Jury is ordered, *(and so on as in No.* 66, *varying to suit the case.)*

Order after conviction in Bastardy.[a] 77.

The State v. C. D. Bastardy.

The defendant C. D. having been by the verdict of a Jury convicted of being the father of a (male) bastard child, begotten on the body of E. F. (spinster) and born day : It is ordered, that the said C. D. do enter into recognizance for the maintenance of the said child, as required by law, on or before next; and that failing therein he be liable to execution according to law.

(Signed by the Judge.)

For the recognizance and execution, see Nos. 153—160.

The Sessions Journal must likewise contain :[b] 78.

All orders of estreat, and fines imposed, for contempt of Court or otherwise.

Every order made on any presentment of the Grand Jury—as it may be written, if written; otherwise, as it may be pronounced.

Every order for a copy of an indictment to be furnished to a defendant after his final discharge from a prosecution for felony, and every other order relative to business in the Sessions which may be signed by the Judge.

Every entry (which disposes of a case or matter on the docket,) made by the Judge on either the Sessions or Contingent Docket, which is not reduced to a special order and signed.

The Common Rules in the Sessions,

And in the form in which the Solicitor procures them to be signed: this being the usual form, to-wit:

In the General Sessions, } Term 184 79.
District. }

On motion of the Attorney-General, ordered:

1. That all recognizances which have not been specially discharged, be continued over to the next term.

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a See Act of 1795, 5 Stat. 270; 1830, 6 Stat. 410; 1831, 6 Stat. 433; Mag. Act of 1839, 11 Stat. 16; Act of 1847. 11 Stat. 436; Commissioners of the Poor vs. Gains, 3 Brev. 396; Commissioners v. Gilbert. Case from Darlington, Dec. 1847, 2 Strob. ——. State v. Derrick, 1 McMul. 338; Exparte Harrington, 1 N. & McC. 203.

b Act of 1839, 11 Stat. 71.

80. 2. That bench-warrants issue against all persons against whom bills of indictment have been found at this, or any former term, and who have not yet been bound over to answer the same; and against all persons who have been convicted at this, or any former term, and have not appeared to receive judgment. And if any of the said persons have removed from, or are without the limits of this district, that the bench-warrants against them, or any of them, be forwarded by the Clerk to the Sheriff of any and every district in this State, in which such persons, or any of them, respectively, reside, or may be found.

81. 3. That *scire facias* issue against all persons who have been bound over to prosecute, or to answer, or to give evidence, and who have not appeared, pursuant to the condition of their respective recognizances; and also against all persons who have been summoned to attend Court as Grand or Petit Jurors, and who have not attended, or been excused.

82. 4. That process of execution issue against all persons who at this, or any former term, have been fined, and have not paid their fines; or who have been convicted, or pleaded guilty, and have not paid the fees and costs, taxed and due upon their respective persecutions.

83. 5. That the Clerk issue process to bind over all witnesses, who have not been bound over, not only in prosecutions already returned to this Court, and not finally disposed of, but also in all prosecutions which may be returned into his office, by competent authority, before the next term.

Certificate of Conviction.

84. *Certificate of Conviction*, granted by a Clerk to exclude a felon from benefit of Clergy—under 27th section of Clerk's Act of 1839, 11 Stat. 77.

THE STATE OF SOUTH-CAROLINA, } To the Hon'ble the Court of Gen'l
District. } Sessions for District.

These are to certify, That at a Court of General Sessions begun to be holden, &c., and thence continued, &c., on the said A. B. was indicted for that [*copying indictment:*] upon this indictment he was on in the said Court arraigned, and for trial put himself upon God and his Country: and afterwards on in the said Court he was convicted of the said felony: the Jury having returned the following verdict, We, &c. and on in the said Court he was put to the bar, and it being solemnly demanded of him to say why the judgment of the law should not be pronounced against him, he prayed the benefit of his Clergy, and it was allowed: all which appears by the record remaining in my office.

In witness whereof, I have hereunto set my hand and seal of office, this day, &c. D. H,, Clerk, G. S.

This is the usual form: but it would be easier and equally short to copy the whole proceedings:—style of the Court, indictment, finding of the Grand Jury, arraignment, and every entry concerning the case in the Journal: and, to this exemplification, add a certificate that it contains the whole proceedings had, &c., *as in No.* 197.

The necessity of making full entries in the Journal, where no separate record is made up, appears from what this certificate requires.

Form of arraignment for any felony. 85.

The accused having been placed in the prisoner's dock, and silence having been commanded by the Sheriff, the Clerk having the indictment before him, addresses the prisoner by the name used for him in the indictment.

"A. B., if thou answerest to that name, hold up thy right hand." *(See note below.)*

The prisoner having raised his hand, or otherwise signified his acknowledgment of the name,—

CLERK.—"Put down thy hand. Thou standest indicted by the name of A. B., for that thou A. B. late of the district of ....."

[Here read the whole indictment from 'that' onward, changing it from the third to the second person. Where the words, '*and so the Jurors aforesaid do on their oaths say*,' occur towards the end of a count, change them to "*and so thou art charged*: At the beginning of a second or any subsequent count, instead of the words, '*and the Jurors aforesaid do further present that he*,' say, "*and thou art further indicted for that thou.*"]

The indictment having been thus read:

CLERK.—"How sayest thou A. B.—art thou guilty of the (murder and) felony whereof thou standest indicted, or not guilty?"

(If the prisoner should say "Guilty" after admonition from the Court, his plea of guilty, if persisted in, would, under the direction of the Court, be entered on the Journal, and the prisoner be ordered for sentence.)

PRISONER,—"Not guilty."

CLERK.—"Culprit: How wilt thou be tried."

PRISONER.—"By God and my Country."

CLERK.—"God send thee a good deliverance! Art thou ready to come to trial."

(The prisoner's counsel then speaks:—) *See Nos.* 53—55, *for the entries.*

Form at the Trial.

Jurors offered and challenged or sworn. 86.

CLERK—Having a list of all the Jurors in attendance, arranged in their order, (2 Bail. 32,) to-wit: first, Jury No. 1: second, Jury No. 2: third, supernumeraries, as they were originally drawn (in which order the names should have been previously given to the prisoner or his counsel, if asked for,[a]) and having called all over so as to ascertain which are in attendance, addresses the prisoner in the dock:

"A. B., prisoner at the bar, these good and lawful men, whose names thou wilt now hear called over, are the Jury who are to pass between the State and thee, upon thy trial for thy life or thy death: if thou wouldst challenge them, or any of them, thou must do so as each one comes to the book to be sworn, and before he is sworn."

NOTE.—Now the prisoner's counsel should interfere if a plea of *misnomer*, any other plea in abatement, or any special matter in bar, as *autrefois acquit*, *autrefois convict*, (possibly pardon) be contemplated.

Now, also, inquiry should be made, if the prisoner stands mute, whether it be *ex visitatione Dei*: if it be suggested that he is insane, whether he be *non compos*, &c.

If a Jury be called to try any issue of fact here made, they will be sworn specially, well and truly to try and determine between the State and prisoner at the bar, whether &c. See Nos. 66 and 67.

As to the right of peremptory challenge on the trial of collateral issues, see 2 Hale, 267. Fost. 42; Bacon Abt. *Juries* E. 9; 4 Black. Com. 353, N. 7; *contra*, Co. Litt. 157 b. Hawk. b, 2 c. 43, § 6. See also 1 Chit. Cr. law 638; 777; 535.

[a] *Semb. contra*, 2 Hill 384.

The Foreman of Jury No. 1, being called by the Clerk and appearing:

CLERK TO THE JUROR.—"Lay thy hand on the Book."

[Here a short pause for the Solicitor to decide as to the Juror. He may direct any Juror to stand aside, and the Juror must do so, and cannot be again presented until all the Jurors in attendance have been presented, when the Solicitor must shew cause of challenge against the Juror, or permit the prisoner to accept him if he will. [a]

It would be unfair to allow the Solicitor to exercise his right after a Juror has been accepted by the prisoner. [b]]

CLERK TO THE JUROR.—"Look on the Prisoner."

CLERK TO THE PRISONER.—"Look on the Juror. What sayest thou?"

(If a peremptory challenge be made, the prisoner speaking for himself, and not by counsel, [c] says, *I challenge him.* If challenge for cause be intended, counsel are heard.)

PRISONER.—(If no challenge.) "Swear him."

CLERK.—*(Oath of the Juror.)* You shall well and truly try, and true deliverance make, between the State of South-Carolina and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God!

(So on until twelve are sworn.)

The twelve having been sworn, and a Foreman appointed, the Clerk calls over the names of the twelve slowly: the Sheriff, in an audible voice, counting *one*, when the first Juror answers; *two*, when the second answers, and so on to *twelve*: when the Clerk answers, "and all sworn." [d] Silence ordered.

37. *Jury charged.*

CLERK TO THE PRISONER.—"A. B., prisoner at the bar, hold up thy hand: put it down."

CLERK TO THE JURY.—"Gentlemen of the Jury, that have been sworn, look upon the prisoner at the bar, and hearken to his charge: A. B. now prisoner at the bar, stands indicted by the name of A. B., for that he A. B., late of the district, &c."

[Recite the whole indictment from "that" onward. Where the words "*and so the Jurors aforesaid do on their oaths say.*" occur towards the end of a count, change them to "*and so he is charged;*" at the beginning of a second, or any subsequent count, instead of the words "*and the Jurors aforesaid do further present that he,*" say, "*and he stands further indicted that he.*"]

"Upon this indictment he hath been arraigned, and upon his arraignment he hath pleaded not guilty, and for trial hath put himself upon God and his Country, of which country you are: so that your business is to inquire whether the prisoner at the bar be guilty of the (murder and) felony whereof he stands indicted, or not guilty. If you find him guilty, you shall say so: if you find him not guilty, you shall say so, and no more. So hearken to the evidence."

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a The State v. Barrontine, 2 N. & McC. 553.

b See Joy on Confessions and Challenges, 110—230. (Law Lib.)

A Juror cannot be examined on his *voir dire*, as to opinions formed or expressed, State v. Baldwin, 3 Brev. 309; State v. Sims, 2 Bail. 33.

If the panel be exhausted, and Jury not formed, there must be consecutive drawings of *tales* (see No. 5 and notes to Rule 36:) as each of the *tales* is drawn, he is called; if he appears, he is presented and accepted or rejected: if he does not appear, another is called, and so on. The State v. Williams, 2 Hill 384.

c 2 Hawk. 413.

d See Nos. 55—58 for the entries.

Oath of a witness on trial of a felony. 88.

The evidence you shall give to the Court and Jury on this trial, now to be had between the State of South-Carolina and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you God!

Verdict rendered and recorded. 89.

The Jury having returned into Court, the prisoner being in the dock, the Clerk calls over the names slowly,—the Sheriff counting as in No. 86.

CLERK TO THE JURY.—"Gentlemen of the Jury, have you agreed upon your verdict?"

The Foreman answering "*Yes*," and handing the record to the Clerk, the Clerk reads the title of the case:

The State,
v. } Indictment. (Murder or other felony.)
A... B...,

(Then the verdict.) "We find, &c. Foreman."

CLERK TO THE JURY.—"That is your verdict, and so ye say all."

If no contradiction be made the verdict is recorded. See Nos. 57 and 58.

(See note below.)

When the prisoner is called for sentence. See Nos. 62—67. 90.

CLERK.—"A. B. hold up thy hand: put it down: thou hast been indicted by the name of A. B., for that." [Here recite the indictment as upon the arraignment, (No. 85,) saying, "*thou hast been charged*," instead of "*thou art charged*:" and "*thou hast been further indicted*," instead of "*thou art further indicted*."] Thou wast upon this indictment arraigned, and upon thy arraignment thou didst plead not guilty, and for thy trial didst put thyself upon God and thy Country, which country—* hath found thee guilty (of manslaughter.) What hast thou now to say why sentence of death should not be passed upon thee?"

The prisoner prays benefit of Clergy, *a* if entitled to it, or pleads other matter which may arrest the judgment, as notice of appeal (if he be put thus to plead it;) perhaps pardon. See 1 Strob. 350.

NOTE.—Polling a Jury is not the right of any party in either a civil or a criminal case, but may be resorted to by the Court at its discretion. 1 McC. 24, 525; 1 Bail. 3.—See No. 27.

a If the Solicitor should intend to resist the plea of *Clergy*, on account of a former grant of the benefit, prior to the commission of the felony, of which the prisoner is now convicted, he should have procured a certificate of the former proceedings and conviction from the Clerk of the district where they were had: (See Nos. 64, 84.)—(If they were not had in this district where the originals may be in Court)—and should have prepared a regular counter plea, to which the prisoner should answer. If however, all the pleadings in such matter be *ore tenus*, great care on the part of the Clerk is necessary in making the proper entries in the Journal, for no other *record* is made up in this State. See Nos 63—66.

At this stage too, inquiry might be had concerning the sanity of the prisoner, and trial of any collateral issue be had before a Jury. See No. 85.

91. *In the Court of Appeals.*

(*As in No. 90 to* *) "then did find thee guilty (of manslaughter.) Thou didst then appeal to this Court and submit here a motion (*or* motions) for new trial (and in arrest of judgment.) Thy motions, after patient hearing and careful consideration, have been dismissed. What hast thou now to say, why sentence of death should not be passed upon thee?"

92. *Where judgment of death has been before pronounced upon a prisoner, and he is called upon to shew cause why a new day for execution should not be assigned.* [a]

CLERK.—"A. B. hold up thy hand. Put it down. Thou wast heretofore indicted for that thou," (read the indictment as in No. 72,) "upon that indictment, (by the plea of guilty, thou wast convicted: *or,)* having put thyself upon God and thy Country, thou wast convicted (of manslaughter:) upon that conviction, thou wast solemnly demanded to shew cause, if any thou hadst, why sentence of death should not be passed upon thee: and no sufficient cause to the contrary having been shewn, the judgment of the law was pronounced, that thou shouldst be hanged by the neck until thy body be DEAD. What hast thou now to say, why the Court should not proceed to award execution against thee on the said judgment?"

Here the prisoner may plead a pardon and it may be allowed: or the Solicitor may counterplead a breach of some condition in the pardon, which the prisoner may admit or deny. Or, if the prisoner has been out of custody since the judgment, he may allege that he is not the person against whom the sentence was given. Insanity may here again be suggested. Any collateral issue of fact is to be tried by a jury sworn specially as in No. 67.

The Clerk must be very careful in the entries. See Nos. 68—76.

93. *In case of a woman, after judgment.*

CLERK—"A. B., hold up thy hand. Put it down. * What canst thou say for thyself in stay of the execution of the judgment which hath been given against thee?"

*If sentence has not been pronounced immediately before, introduce immediately after the * above,* "thou wast heretofore convicted for that, &c." as in No. 92 down to "DEAD."

94. *The Fore-matron's oath.*

You, as Fore-matron of this Jury, do swear, that you will search and try the prisoner at the bar, whether she be with child of a quick child, and thereof a true verdict give according to your skill and undertanding. So help you God!

95. *The rest of the same Jury: one by one.*

The same oath your Fore-matron hath taken on her part, you shall well and truly observe and keep on your part. So help you God!

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a See The State v. Chancellor, 1 Strob. 347: The State v. Kitchins, 2 Hill 613; The State v. Addington, 2 Bail. 516; The State v. Smith, 1 Bail. 283; The State v. Fuller, 1 McC. 178.

Oath of an Officer to keep the Jury of Matrons. 96.

Just like the oath of officer to keep any other Jury, (No. 103,) except that, instead of "*that you will suffer no person to speak to them, &c.*" say, *that you will suffer no person but the prisoner to speak to them, &c.*

Verdict of the Jury of Matrons. 97.

We find that A. B. is (*or*, is not) pregnant with quick child.

....., Forematron.

If the verdict be that she is pregnant, a reprieve until the next term is of course granted: and the whole proceedings are carefully entered by the Clerk. At the next term she is again presented. See 1 Ch. Cr. Law 760.

Oaths.[a]

Oath of the Foreman of the Grand Jury. 98.

You, as Foreman of this Grand Inquest, shall diligently inquire and tru presentment make of all such matters and things as shall be given you in charge: the State's counsel, your fellows, and your own, you shall well and truly keep secret. You shall present no one for envy, hatred, or malice; nor shall you leave any one unpresented for fear, favor, affection, reward, or hope of reward: but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God.

The same oath, saying "*one*" instead of "*Foreman*," must be administered to any Grand Juror who did not hear the Foreman swear.

Oath of the rest of the Grand Jury: sworn three or four at a time. 99.

The same oath which your Foreman hath taken on his part, every of you (*if one*, you) shall well and truly observe and keep on your part.

Oath of a witness to give evidence to the Grand Jury, on a Bill of Indictment. 100.

The evidence you shall give to the Grand Jury on this bill of indictment, shall be the truth, the whole truth, and nothing but the truth.

Oath of a witness sent to a Grand Jury to give information on some matter besides a Bill of Indictment. 101.

The evidence you shall give the Grand Jury touching the matters of which you shall be questioned, or shall speak before them, shall be the truth, the whole truth and nothing but the truth.

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a The form of every oath administered in the second person, concludes "So help you God!" Just before these words, if the person to be sworn uses any form of oath or affirmation different from the usual form of laying the right hand on the Holy Evangelists, introduce the words, "this you solemnly swear (*or*, affirm) according to the form of your religious persuasion." Or, instead of saying at the beginning. "You do solemnly swear that, &c." say, "You do solemnly swear, (*or* affirm,) according to the form of your religious persuasion, that, &c." See 3 Stat. 281.

Swear or Affirm.—Swear, in the case of one, who scruples not at an oath, but rejects the form: Affirm, if there be any tenderness of conscience about swearing.

102. *Oath of the Petit Jury in the Common Pleas.*

To be administered to the Jurors, three at a time, when the Jury is first organised, or to any Juror when afterwards he first takes his seat, for ordinary business.

You shall well and truly try all issues, ~~and execute all writs of inquiry~~ which shall come before you during the present term, and true verdict give according to the evidence.

103. *Oath of the Petit Jury charged with the trial of a misdemeanor in the Sessions.*

You shall well and truly try the issue joined in this case, the State against C. D. and F. H. for , and a true verdict give according to the evidence.

If the case has been traversed, you may say "the issue of this traverse, the State vs. &c." In every case, even where a defendant does not attend, an issue is supposed to be joined.

104. *Oath of a witness on the trial of a misdemeanor in the Sessions.*

The evidence you shall give the Court and Jury in this case, the State against C. D. and F. H, for , shall be the truth, the whole truth and nothing but the truth.

105. *Oath of a witness in the Common Pleas before Jury.*

The evidence you shall give the Court and Jury upon this (Sum. Pro.---Inquiry---Issue,) between A. B., Plaintiff, and C. D., Defendant, shall be the truth, the whole truth and nothing but the truth.

106. *Oath of a witness on trial of Sum. Pro. before a Judge.*

The evidence you shall give the Court upon this Sum. Pro. between A. B. Plaintiff, and C. D., Defendant, shall be the truth, the whole truth and nothing but the truth.

107. *Voir dire.*

Oath to be administered to a person called as a witness and examined touching his interest, or to any person who is to be examined touching a collateral matter before the Judge, or who is ordered by the Court to be sworn in this form.

You shall true answer make to all such questions as shall be demanded of you (touching the matter now before the Court, by the Court, *or* by order thereof.) You shall speak the truth, the whole truth and nothing but the truth.

108. *Oath of a Constable to keep a Jury.*

To be administered whenever the Judge leaves the Court-house, whilst the Jury is out, or when the Jury room is not within view of the Court, or whenever ordered by the Court.

You [*or*, each of you] swear, that you will keep the Jurors sworn of this Jury in the room appointed for them, [*or*, in some quiet convenient place,] without meat drink, or fire, (water and candle-light only excepted,) until they shall have agreed on their verdict, or you shall have been otherwise ordered by the Court: that you will suffer no

person to speak to them, nor any of them, without leave of the Court: neither speak to them, or any of them yourself, without such leave, except yourself to ask whether they have agreed on their verdict.—So help you God!

Oath of an Interpreter to a deaf and dumb witness. 109.

On this trial, now to be had between the State and the prisoner at the bar, [*or*, On the trial of the issue joined in this case, the State against E. B. for assault and battery: *or*, Before the Grand Jury, on this bill of indictment, the State against E. F. for forgery: *or*, On this trial of the issue (writ of inquiry, *or*, summary process,) between A. B., Plaintiff, and C. D., Defendant:] You shall well and truly interpret to G. H., a witness here produced, the questions and demands which shall be made to him, and you shall well and truly interpret to the Court and Jury (*or*, Court or Jury) the answers which this witness shall make. So help you God!

Oath of an Interpreter in general sworn in any case. 110.

On, &c. (*as in the preceding No.*) You shall true interpretation make of the evidence, about which your assistance shall be asked, or you shall speak, to the best of your skill and understanding. So help you God!

Oath under Constitution of the State. 111.

To be taken by any person chosen or appointed to any office of profit or trust, before entering in the execution of his office.

I do solemnly swear, (or affirm) that I will be faithful, and true allegiance bear to the State of South-Carolina, so long as I may continue a citizen thereof: and that I am duly qualified, according to the Constitution of this State, to exercise the office to which I have been appointed; and that I will, to the best of my abilities, discharge the duties thereof, and preserve, protect and defend the Constitution of this State, and of the United States. So help me God!

Oath against Gaming. 112.

To be taken by every Sheriff, Deputy Sheriff, Coroner, Deputy Coroner, Magistrate and Constable, before he shall be qualified to act in his office. See Act of 1816, 6 Stat. 27.

I further swear, that I will enforce, and to the extent of my power and ability carry into effect, the Act of the General Assembly, passed in 1816, entitled "An Act the more effectually to prevent the pernicious practice of gaming," and in all cases will bring to justice violators of the same, whenever such violations shall come within my view and knowledge: So help me God!

Oath to be taken by Judges, Clerks, Sheriffs, Deputy Sheriffs, Tax-Collectors, and all officers "who are any ways concerned in the drawing, balloting, impanelling, or summoning of Juries." 1731, 3 Stat. 282 § 29. 113.

I do further solemnly swear, that I will to the best of my ability, so far as I may be concerned in the drawing, balloting, impanelling or

summoning of Juries, truly, diligently and uprightly carry into due and faithful execution the Act of the General Assembly, commonly called the Jury law, passed A. D. 1731, as the same has been since altered, or amended, or may be so hereafter.

114. For oaths to be endorsed on the Clerk's commission, see 11 Stat. 69.
For oath to be taken by him as Commissioner of Locations, see 11 Stat. 81.
Two Magistrates of the District required: *Query*, as to Notary Public? See 5 Stat. 479, 625: 1 Strob. 153: 11 Stat. 24 § 34: 11 Stat. 103.)
For oaths to be endorsed on the written deputation of a Deputy Clerk, see 11 Stat. 69.
For oaths to be endorsed on a Sheriff's commission, see 11 Stat. 26.
For oaths to be endorsed on the written deputation of a regular Deputy Sheriff. 11 Stat. 23: see also *infra* No. 206.
For oaths of Magistrates (including oath against gaming) see 11 Stat. 14, 78. "Shall sign roll to be kept by the Clerk." List to be sent to the Secretary of State first of November, annually.
As to oaths of Constables, see 11 Stat. 55, 78.
For oath of Jury to try a collateral issue, see No. 67.
Oaths concerning Jury of Matrons: Nos. 94—96.
Oath of a Juror in felony; No. 86.
Oath of a witness in felony: No. 88.
Oath of insolvent debtor in open Court: No. 136.
Oath of one of the Commissioners who execute writ of *ded. potestat.* to take renunciation of dower or inheritance. No. 193.
Affidavits: see bail, trover, prison bounds, &c.

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115. ## *Rules to Plead and Reply.*

Rule to plead. [a]

A..... B.....,
v. } Assumpsit. N. O., Plff's Att'y. R. S., Deft's Att'y.
C..... D.....,

The plaintiff having this day filed his declaration, Ordered, that the defendant plead thereto within one month, [b] or judment by default may be entered against him.

Rule to reply. [c]

C..... D.....,
ads. } Assumpsit. R. S., Deft's Att'y. N. O., Plff's Att'y.
A..... B.....,

The defendant having this day filed his plea, Ordered, that the plaintiff reply thereto within ten days, or judgment of *non pros.* may be entered against him.

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a 1st and 2d Rules of Court, *ante*, p. 33; 1791, 7 Stat. 263; 1839, 11 Stat. p. 71 § 8, p. 75 § 16.

b For the meaning of "month," see Alston ads. Alston, 2 Tread. C. R. 608: Williamson v. Farrow, 1 Bail. 611. In England, when a month is mentioned in a statute, it signifies a lunar month. 2 Black. Com. 141; 6 T. R. 224. In South-Carolina and some other States, the English rule has been modified. See cases collected in 3 Kent's Com. p. 95, n. b.

c 3d Rule of Court, *ante* p. 33.

Foreign Attachment. [a]

Rule to plead, when absent debtor has neither wife nor attorney within the State. [b] 116.

THE STATE OF SOUTH-CAROLINA, District. } In the Common Pleas.

A..... B....., v. C..... D.....,} Attachment.

Whereas, the plaintiff did on the day of file his declaration [c] against the defendant, who (as it is said) is absent from and without the limits of this State, and has neither wife nor attorney known within the same, upon whom a copy of the said declaration might be served: It is therefore ordered, that the said defendant do appear and plead to the said declaration, on or before the [d] day of which will be in the year of our Lord one thousand eight hundred and otherwise final and absolute judgment will then be given and awarded against him.

D. H., C. C. P.

Clerk's Office. District.

Rule to plead where absent debtor has either a wife or attorney within the State. [e] 117.

A... B..., v. C... D...,} In the Common Pleas, District. } Case in Attachment.

The Plaintiff having on the day of filed his declaration, and it appearing [f] that R. D. the wife of the absent debtor, resides [*or*, that

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a See 1744, 3 Stat. 618; 1785, 7 Stat. 214; 1788, 7 Stat. 246; 1839, 11 Stat. 76, 29, 18; 1843, 11 Stat. 256; 1844, 11 Stat. 290; Nos. 116—127; 290—311; 345—349.

Proceedings set aside, on motion, without the appearance of the defendant, where there was no sufficient service of the writ. Burrell v. Letson, 2 Speer 330.

Foreign attachment quashed upon affidavit that defendant was in the State when it was lodged. 2 Hill 631.

Proper course of proceeding upon return of the garnishee—as to discharging the garnishee, or making objections to the return. Martin v. Parham, 1 Hill 213. See also, as to the time of filing a suggestion, Burrell v. Letson, 1 Strob. 239.

Time for return allowed to garnishee. 2 Speer 73.

Time to declare, death of absent debtor, and Sci. Fa. Bank v. McRae, 2 Speer 639.

Judgment and execution against garnishee. 1 Hill 53: 2 Speer 529; 1 Rich. 457.

Rule and attachment against garnishee, 1 Rich. 457; Cohen v. Sherman, 2 Strob.—See Nos. 39 and 40.

An attachment will not lie against an absent executor or administrator. Harp. 125.

b 1744, 3 Stat. 618 § 2. Notice shall be given once every three months during the year and day.

c There should be before declaration an affidavit of the debt. Sec. 5 of Act of 1744. See Stoney v. McNeill, Harp. Rep. 156; Creagh v. Delane, 1 N. & McC. 139; Foster v. Jones, 1 McC. 116; Turner v. McDaniel, 1 McC. 152.

The declaration must be filed within two months after the return of the writ. What is the return? See Bank v. Torre, 2 Speer 501; Ancrum v. Sloan, 1 Rich. 421. When leave of further time may be granted. Perry v. Aiken, 3 Rich. 60; See 67th Rule of Court *ante* p. 43.

d A year and a day from the time of filing declaration.

e 2 Sec. Act of 1744, 3 Stat. 618.

f Of this some evidence should be adduced by affidavit.

E. F. is the attorney in fact of C. D., the absent debtor, and is a resident,] within the limits of this State, on motion of G. H., Plaintiff's Attorney, it is ordered, that a copy of the declaration in this case be served on the said R. D., wife [*or*, E. F., Attorney] aforesaid, with a copy of this order endorsed thereon; and that if the said C. D., the defendant, shall not appear and make his defence to this action, on or before the day of next,[a] judgment shall be given and awarded for the plaintiff.

118. *Bond before signing writ.*[b]

By plaintiff or his agent—penalty, double the amount for which the attachment issues, (viz: double the debt and damages, or damages laid in the writ) payable to defendant, his executors, administrators, and assigns.

Whereas, A. B., the plaintiff, is about to sue forth from the Court of Common Pleas for district, a writ of attachment against C. D., absent debtor:

Now the condition of this obligation is such, that if the said A. B. shall be answerable for all damages the said C. D. may sustain by any illegal conduct in obtaining the said writ, then the above obligation to be void, &c. A. B., [L.S.]

If by an agent[c] *of the plaintiff, say,* "whereas, E. F., as agent of A. B. is about in the name of A. B., to sue forth, &c." *and in the condition, instead of A. B., say,* "E. F. shall be answerable," &c. (Signed,) E. F., [L. S.]

Special Bail for dissolving an Attachment.[d]

119. *Recognizance of Bail.*

A..... B.....,
v. } Case in Attachment.
C..... D.....,

Plff's Att'y, $

Be it remembered, that on the day of 18 before me Clerk of the Court of Common Pleas, and *ex officio* Commissioner of special bail, appears C. D. and acknowledges to owe

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a "The Justices shall have power to allow any time not exceeding a year and a day." But although it seems that, a day short of the year and a day may be appointed for the appearance, it does not appear that judgment for the plaintiff for want of appearance can be awarded before the expiration of the year and a day.

b 1839, 11 Stat. 76 § 21. A bond substantially conformable to the Act has been held sufficient. 2 N. & McC. 110.

The omission of a bond is an irregularity of which only the absent debtor can take advantage. Wigfall v. Byne, 1 Rich. 412; Boyd v. Boyd, 2 N. & McC. 125.

The bond is an additional security and the action at common law, for damages done by an illegal action, still lies. Sanders v. Hughes, 2 Brev. 495.

c Byne v. Byne, 1 Rich. 438; See Dillon v. Watkins, 2 Speer 445; Myers v. Lewis, 1 McMul. 54.

d 11 Stat. 77; 2 McMul. 10; 3 Stat. 620; 7 Stat. 214. 3 Black. Com. 291 and Appendix No. 3 § 5. 1 Sellon's Prac. 139 et seq. 1 Tidd (1 Amer. Edit.) 216 et seq. Bennett v. Brown, 1 Strob. 303 and cases there cited. By the Act of 1768, the Judges were authorized to appoint Commissioners of special bail, 7 Stat. p, 204. Magistrates and Clerks of Court are, *ex officio*, Commissioners of special bail. Act 1791, 7 Stat. p. 275 § 13; 1799, 7 Stat. p. 294 § 6; 1839, 11 Stat. p. 20 § 21: p. 76 § 21; p. 78 § 32. As to the effect of putting in special bail, see Fife v. Clark, 3 McC. 347. Croslin v. Reed, 2 McMul. 10. By the Act of 1843, 11 Stat. p. 256, a defendant may appear and plead by attorney without putting in special bail, provided a warrant of attorney be filed in the Clerk's office, from which the attachment issued.

to the plaintiff A. B. dollars, and R. S. and T. U., who severally acknowledge to owe to the same person the sum of dollars, to be levied of their several goods and chattels, lands and tenements, *upon condition* that, if the defendant C. D., be condemned in the action aforesaid, he shall pay the condemnation, or render himself a prisoner to the Sheriff of district, for the same: and if he fail to do so, that the said R. S, and T. U. do undertake to do it for him.

Taken and acknowledged before me this day of A. D. 18
D... H..., C. C. P.,
And ex-officio Com'r of Special Bail.

C. D., [SEAL.]
R. S., [SEAL.]
T. U., [SEAL.]

Bail Piece. [a] 120.

STATE OF SOUTH-CAROLINA,
District.

C. D. is delivered to bail upon the taking of his body to R. S. and T. U., at the suit of A. B. in a plea of assumpsit in attachment.

Defendant in sum of $
Each of bail, $

R. S., [SEAL.]
T. U., [SEAL.]

Taken and acknowledged this day of A. D. 18
D.. H.., C. C. P.
And ex-officio Com'r of Special Bail.

Justification. [b] 121.

A.... B....,
v.
C.... D....,
In the Common Pleas, District.
Attachment in Asst. dam. $

R. S. and T. U., bail for the defendant, severally make oath and say each for himself, that each of them is a housekeeper in the district aforesaid, and worth dollars, over and above what will pay his debts.

Sworn to before me this day of
A. D. 18

R. S., [SEAL.]
T. U., [SEAL.]

The law was formerly different. Acock v. Linn, Harp. Rep. 368. Vann v. Frederick, 2 Bail. 303. Such appearance without special bail, does not now dissolve the attachment as the entry of special bail does: nor does the confession of judgment. Wigfall v. Byne, 1 Rich. 412.

The § 8 of the Act of 1794, 3 Stat. 620, seems to contemplate that a dissolution of the attachment and delivery of the goods may be procured in the absence of the debtor, if bail to answer the action be put in by any person who shall appear as his attorney: *which person and his security* shall be obliged by the recognizance. See Vann v. Frederick, 2 Bail. 304.

All objections to the attachment are waived by appearance. 2 Bail. 454.

a This, in K. B., is taken in lieu of a formal recognizance; and is unnecessary, if the recognizance No. 119 be well executed.

b Of the bail given and the intention to justify, with time and place, notice should be given to the plaintiff's attorney. See books of practice before cited.

122. *Order dissolving the Attachment.* [a]

A.... B....,
v. } In the Common Pleas, District.
C.... D....,
Case in Attachment.

The defendant C. D. having in this case appeared before the Clerk of the Court and put in special bail, it is ordered, on motion of K. L., Deft's Att'y, that the attachment be dissolved.

(Signed by the Judge.)

By order of the Court, this day of A. D. 18

C. C. P.

Order under 2d Sec. of the Attachment Act of 1844. [b]

123. *Affidavit by Plaintiff, or person duly authorized by him.*

STATE OF SOUTH-CAROLINA, District. } In the Common Pleas.

A.... B....,
v. } Writ of Attachment lodged.
C.... D....,

I, A. B., swear, that I have just cause to believe that E. F., who has been summoned as a garnishee, has in his possession, custody, power or control, some property of the absent debtor C. D., to-wit: (two slaves, a bond on K. W., and two or more books of account, and various choses in action, the particulars whereof are unknown to me,) and that the said E. F. is about [to remove all or some of the said property from and beyond the limits of this State, *or*,[c]] to waste or destroy all or some of the said property. A. B.

Sworn to before me day of

124. *Order.* [d]

STATE OF SOUTH-CAROLINA, District. } In the Common Pleas.

A.... B....,
v. } Writ of Attachment lodged day
C.... D....,

To all and singular the Sheriffs of the said State:

You and each of you are hereby required to cause E. F. mentioned

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a This order is usually taken in Court: but if special bail should be put in during vacation, and no Judge be near, it would seem to counteract the intentions of the statute, if the bail put in should not *ipso facto* be held to work a dissolution of the attachment. If the Clerk cannot give an order for dissolution, he may safely give a certificate that the special bail has been put in and perfected; and leave to the Sheriff either to deliver the property upon this certificate, or to take a bond under the 18th section of the Sheriff's Act of 1739, 11 Stat. Stat. 30. See No. 310.

b 11 Stat. 290,

c The affidavit should state one or the other of these intended acts, and not be in the alternative. See No. 345.

d The phraseology of the second section of the Act of 1844, leaves it doubtful whether the order may be made by the Clerk: and more doubtful, whether previous service of a garnishee is necessary to authorize it. This form may be safe: a more effective one which would prevent the escape of a garnishee after he received notice, might perhaps be ventured upon. See Byne v. Byne, 1 Rich. 442, and Nos. 300—303.

in the annexed affidavit, to enter into bond with good and sufficient security, in double the amount sued for in the writ to which this order is annexed, with condition that the said E. F. shall make the returns [a] required by the Act of the General Assembly passed A. D. 1844, entitled "an Act to amend the Attachment law of this State," and shall surrender and deliver the property of the above named C. D., the absent debtor, according to law.

Clerk's Office, day of

D. H., C. C. P.

Affidavit and order should be annexed to the writ.

Recognizances under the Attachment Acts.

125. *Recognizance to be entered into by plaintiff, before goods attached are delivered to him, under 3d Section of Attachment Act of* 1744, [b] *amended by 4th Section of Attachment Act of* 1844. [c]

THE STATE OF SOUTH-CAROLINA, }
District. }

Be it remembered, that on this day of in the year of our Lord, &c. before me, [one of the magistrates of the district aforesaid,] Clerk of the Court of Common Pleas and General Sessions aforesaid, appeared A. B. *(the Plaintiff)* E. F. and G. H., and acknowledge themselves to owe to C. D. the defendant, the absent debtor, to-wit: A. B., the sum of dollars, *(double the value of the goods attached, according to the inventory and appraisement required by the Act of* 1744*)* and E. F. and G. H. severally the sum of *(the single value, if the two sureties: double, if one. It is safe for the Clerk to require two.)* dollars, to be levied of their lands, tenements, hereditaments, goods and chattels, if the above mentioned A. B. shall fail in performing the condition underwritten.

Whereas, A. B. has sued out from the Court of Common Pleas for this district aforesaid, a writ of attachment against the said C. D., and certain monies, goods, chattels, debts and books of account, which have been attached as the property of the said C. D. are now to be paid and delivered into the hands of the said A. B., the same having been first inventoried and appraised by the persons appointed by the Court for that purpose:

NOW THE CONDITION of this Recognizance is such, that if the said A. B. shall prosecute his suit commenced by the writ of attachment aforesaid, with effect; and if the monies and the appraised value of the goods and chattels, and also the debts and books of account, (all according to the inventory and appraisement made by the persons appointed as aforesaid, and filed in the Clerk's office of the Court aforesaid,) which are now delivered to the said A. B. (according to his receipt on the said inventory,) shall be forthcoming in case the said C. D. the ab-

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a What are the "returns hereinbefore required," mentioned in the Act? Is a schedule on oath, to be rendered to the Sheriff, one?

b 3 Stat. 618.

c 11 Stat. 291.

sent debtor, shall appear in Court within the time allowed by law and discharge himself of the demand of the said A. B. against him; and if the said absent debtor shall not appear as aforesaid, and the said A. B. shall render and deliver into the hands of the Clerk of the Court aforesaid, the residue of such monies, goods, chattels and debts, and the said books of account, after payment and satisfaction of such sum as has been awarded him, [*or* her *or* them] by the judment of the Court: which residue of the monies, goods, chattels and other things shall be subject to the order of the said Court. Then this Recognizance shall be null and void, else to remain in full force and virtue.

Taken and acknowledged this day } A. B., [L.S.]
of in the year above writfen, &c. } E. F., [L.S.]
D. H., C. C. P. [*or* Magistrate. } G. H., [L.S.]

See Nos. 37, 127.

126. *Recognizance to be entered into before the Clerk of the Court, by any Assignee or Assignees appointed under the 5th Section of the Attachment Act of* 1844, [a] *before such Assignee or Assignees shall have authority to act under the appointment. See Nos.* 38. 127.

THE STATE OF SOUTH-CAROLINA, }
District. }

Be it remembered, that on this day of in the year of our Lord before me, Clerk of the Court of Common Pleas for the district aforesaid, appear T. J. S. and W. P. S., (the assignees) and W. Y. and Y. X. (their sureties, [b]) and acknowledge themselves to owe to the State of South-Carolina, that is to say, the said T. J. S. and W. P. S., severally the sum of [c] dollars, and the said W. Y. and Y. X. the sum of [c] dollars, to be levied of their and every of their lands, tenements, hereditaments, goods and chattels, if the above-mentioned T. J. S. and W. P. S. shall fail in performing the condition underwritten.

Whereas, under a writ of attachment sued out in the Court aforesaid, for the district aforesaid, by A. B. against C. D., the absent debtor, certain property of the said C. D. [has been attached and is in the hands of the Sheriff, *or* by the return of O. L., Garnishee, (and the verdict which has been found upon an issue made thereon,) appears to be in the hands of the said O. L.,] and an order has been made [by the Court aforesaid, *or*, by the Honorable one of the Law Judges of the said State at Chambers,] appointing the said T. J. S. and W. P. S., Assignees, according to the Act of the General Assembly passed in 1844, entitled "an Act to amend the Attachment laws of the State."

NOW THE CONDITION of this Recognizance is such, that if the said T. J. S. and W. P. S., of the property attached under the writ aforesaid, which has come, or shall come to their possession or power,

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a 11 Stat. 291.

b Sufficient security, to be approved by the Clerk.

c "Such sum as shall be fixed by the Court or Judge," that makes the appointment of Assignees.

shall receive, pay over and deliver the monies, goods, chattels, debts, books of account, lands, leasehold estates, hereditaments, chattels real, rents, issues, profits, and all other monies which they may receive as assignees as aforesaid, in such manner as may be ordered by the Court aforesaid. Then this Recognizance shall be void, else to remain in full force and virtue.

Taken and acknowledged the day and year above written. D. H., c. c. p.

T. J. S., [L.S.]
W. P. S., [L.S.]
W. Y., [L.S.]
Y. X., [L.S.]

The receipt of the Assignees should be taken for whatever may be delivered to them.

127.

Note.

It is doubtful to whom either of these two Recognizances (Nos. 125 and 126,) should be made payable: one is here made payable to the absent debtor, the other to the State, that both forms might be seen and choice be taken, according to the judgment of the practitioner. The first is by the Act of 1844, incidentally called *a Bond*, but it is called a recognizance by the Act of 1744 in the 3d Section, which is referred to and amended by the 4th Section of the Act of 1844. In 1744, the analogy of the Recognizance of bail, payable to the plaintiff, was probably in the mind of the penman. In 1844, the term *recognizance* may have been associated with a remembrance of decisions which had been made concerning recognizances, in the cases of *Commissioners of the Poor* v. *Gaines*, 3 Brev. 396, and *Exparte Harrington*, 1 N. & McC. 203, which imply, if not express, that where an act requires a recognizance and does not declare to whom it shall be payable, it must be made payable to the State. The assignee is an appointee, in fact an agent, of the Court, selected to take charge of funds in Court; and required to dispose of them as ordered by the Court: in his fidelity, other creditors, garnishees and assignees of the debtor, may have interest as well as the absent debtor: and it seems right, that a security, in the name of the *State*, should be taken, to which any one having interest may resort.

Much of the same observations, however, applies with equal force to the case of goods attached being delivered to the plaintiff upon a security: and it would be safe, in taking an order from the Court for such delivery, to express that the Recognizance should be made payable to the State, for the use of all concerned; in which case the last of these forms would be used, having been first modified to suit the circumstances. See Nos. 37 and 38.

Bail. [a]

Bail desired before suit commenced. [b] 128.

An affidavit must be endorsed on, or annexed to the writ or process, of the sum really due, (which must exceed $30.60, except in case of a transient defendant,) or, there must be an order of a Judge, Magistrate or Clerk, expressing the sum for which bail shall be given, on probable cause shewn, to be endorsed on or annexed to the writ or process.

See concerning the requisites of the affidavit, 3 Rich. 145; 1 McMul. 103; 1 N. & McC. 530; 2 N. & McC. 535; 3 McC. 313. Affidavit by agent. 2 Rich. 197, and the cases cited in the opinion and dissenting opinion. Mode of authentication when it is made out of the State. 1 M. Cons. Rep. 280.

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a Bail is not allowed, when a defendant has given a bail bond in the first action and is in a second action sued upon the judgment recovered in the first. Bank v. Green, 2 Rich. 336. Nor perhaps in actions on bail bonds, and replevin bonds. 6 T. R. 336; 8 T. R. 85, 450.

b 1768, 75 Stat. 204 § 20: 1791, 7 Stat. 275 § 13; 1799, 7 Stat. 294 § 6; 1839, 11 Stat. 73 § 32: 20 § 21.

Order for Bail.

Let the defendant be held to bail in the penalty of *(twice the sum sworn to, if the demand be one capable of exact estimation in money: twice the least damages, which, according to the circumstances, seem to have been sustained, if the action be one sounding merely in damages.)*

Clerk's Office Common Pleas, } D. H., c. c. p.
District day }

129. *Bail pending action.* [a]

(Affidavit as in No. 128.)

Order.

The State of South-Carolina, } In the Common Pleas.
District. }

A.... B...., } Assumpsit Note, *or* Debt, *or* Covenant, &c.
v. } Writ lodged day : Declaration filed
C.... D...., } day : Order for judgment day : Issue joined Term : On Issue Docket for the fourth time October Term 1848, *(according to the state of the case.)*

All and singular the Sheriffs of the State aforesaid, are hereby required to hold the defendant C. D. to bail in the case above-mentioned, in the penalty (*as in No.* 128.)

Clerk's Office, } D. H., c. c. p.
day }

For Special Bail see No. 119.

Trover. [b]

130. *Affidavit.*

That the chattel belongs to the Plaintiff, that it has been converted by the defendant, and that it is of the value of dollars.

131. *Bond to be taken by the Clerk on granting the order.* [c]

By plaintiff, or his agent, with good surety, in a penalty equal to double the value sworn to: payable to the defendant, [d] his executors, administrators and assigns.

Condition: Whereas, the above bound *(Plaintiff)* intends to commence [*or*, has brought and has now pending] an action of Trover in the Court of Common Pleas for district, against the above named (*Defendant*) for the conversion of a slave, named Tom; and the said plaintiff desires an order, by which he may have a bond for the

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a 1827, 6 Stat. 337: 1839, 11 Stat. 78,

b 20th Sect. Clerk's Act 1839, 11 Stat. 76; 1827, 6 Stat. 337.

c This bond is not assignable. Smith v. Cook & Norris, 2 McMul. 58. For other cases upon this bond, shewing what is *illegal conduct*, and what damages may be recovered, see Dehay v. Ferguson & Dangerfield, 2 McMul. 228; Brown v. Spann, 3 Hill 324.

d If several defendants, "to them, or either of them, his and their executors, &c:"

production of the chattel sued for, to satisfy his judgment in case he should recover: Now THE CONDITION of this obligation is such, that if the said *(obligors)* shall jointly and severally be answerable for all damages, which have been or may be sustained by *(the Defendant* [a]*)* by any illegal conduct in commencing and conducting the said action, then this obligation to be void, &c.

(Seals.)

Order. 132.

To be annexed to the writ, if made before the commencement of the action; but separate, if made afterwards.

THE STATE OF SOUTH-CAROLINA, District. } In the Common Pleas.

To all and singular the Sheriffs of the said State:

Whereas, *(the Plaintiff)* intends to commence [*or*, has brought and has now pending] in the Court of Common Pleas for district, an action of Trover against *(the Defendant)* for the conversion of a slave, named Tom, and having given the necessary bond on his part, desires the bond of *(the Defendant)* in such case obtainable:

You and each of you are hereby required, without delay, to arrest the said *(Defendant)* and cause him to enter into bond with sufficient surety, payable to the Sheriff of the district aforesaid, in the penalty of dollars, [b] conditioned for the production of the said slave, the chattel sued for, to satisfy the judgment of the said plaintiff in case he should recover in the action aforesaid.

Clerk's Office, day of } D. H., C. C. P.

See No. 312.

Insolvent Debtors. [c]

Notice under the Insolvent Debtors Act. 133.

To be published once a month, or oftener, for three months. 1 Rich. 192.

THE STATE OF SOUTH-CAROLINA, District.

C. D., who is in the custody of the Sheriff of district, by virtue of a writ of at the suit of A. B., having filed in my office, together with a schedule, on oath, [d] of his estate and effects, his petition to the Court of Common Pleas, praying that he may be admitted to the benefit of the Acts of the General Assembly made for the relief of insolvent debtors. It is ordered, that the said A. B., and all other the

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a If several defendants, "the defendants (*naming them,*) or either of them."

b Twice the value sworn to.

c See Act of 1759, commonly called the Insolvent Debtors Act, 4 Stat. 87. See Act 1788, commonly called the Prison Bounds Act, 5 Stat. 73; 1836, 6 Stat. 556: 1840, 11 Stat. 121; 1841, 11 Stat. 153.

In what cases the benefit of the Insolvent Acts is denied. See Act of 1788, § 7: Smith v. Blair & Hogg, 2 Rich. 86, and cases cited. See Note to No. 147.

d 3d Sec. of Act of 1788. 2 McMul. 363. 1 Rich. 39.

creditors to whom the said C. D. is in anywise indebted, be, and they are hereby summoned, and have notice to appear, before the said Court at Court-house, on the day of[a] next, to shew cause, if any they can, why the prayer of the petition aforesaid, should not be granted.

Office of Common Pleas, } D. H., c. c. p.
District day of }

134. *Affidavit to be subjoined to Schedule*:

I, C. D., swear, that the preceding schedule contains a full and true account of my whole estate real and personal, with the dates of the securities wherein any part of it consists, and the deeds, notes or vouchers relating thereto, and the names of the witnesses to the same so far as my knowledge extends therein.[b]

135. *Affidavit of service of Rule.*[c]

I, E. F., swear, that for three months next preceding day of the order, of which a copy is annexed, was published (daily *or* weekly, *as the case may be*,) in a gazette published in .

136. *Oath to be taken by the Insolvent in open Court.*[d]

You, C. D., do solemnly swear, in the presence of Almighty God, that you have been a prisoner[e] *within the prison bounds of this district*, from the time of your being arrested (*or*, surrendered,) at the suit of without your consent or procurement,[f] and without any fraud or collusion whatsoever; and that the account by you delivered into this Honorable Court, with your petition to this Court, doth contain a true and full account of all your real and personal estate, debts, credits and effects whatsoever, without exception, which you or any person in trust for you have, or at the time of your said petition had, or are, or were in any respect entitled unto, in possession, remainder, or reversion; and that you have not at any time since your being sued, arrested or imprisoned, or before, directly or indirectly, sold, leased, assigned, or otherwise disposed of, or made over in trust for yourself or otherwise, other than as mentioned in such account, any part of your lands, estate, goods, stock, money, debts, or other real or personal estate, whereby to have or expect any benefit or profit to yourself, or to defraud any of your creditors to whom you are indebted: and that you will to the utmost of your power, endeavor to collect all and singular the title deeds to your lands, together with the remainder of your goods and effects contained in your said account,

a See Bettis v. Nixon, 1 Strob. 148. The Clerk may grant this Rule: a particular day in the term should be specified, and if the petition be not heard on that day, it should be continued to some subsequent day. See 15th Rule of Court.

b 1st Sect. Act of 1759, 4 Stat. 87. 3d Sect. Act of 1788, 5 Stat. 78.

c 1st Sect. Act of 1759, 4 Stat. 87; 1 Strob. 152.

d Act of 1759, 4 Stat. 87.

e 6th Sect. Act of 1773, 5 Stat. 79.

f A plaintiff may deprive a defendant of the benefit of the act by discharging him from confinement without his consent, if he has been arrested under *mesne* process; but cannot afterwards arrest him again. 1 McMul, 236.

and the vouchers relating to or concerning the same, wheresoever, or in whosoever hands they may be, within this State, and will surrender the same to your assignee or assignees, as soon as possible after your discharge: and that you have not expended more than [a] *two shillings and sixpence per diem*, out of your estate for your subsistence, since you have been a prisoner as aforesaid. So help you God!

Order of Court, allowing certain articles to be retained by the petitioner. [b] 137.

To be entered on the minutes of C. P.

Exparte, } Petition for the benefit of the Insol'vt Debtors Acts.
C. D... }

It is ordered, that the petitioner be allowed to retain of the articles in his schedule, two beds with necessary bedding, two bedsteads, one spinning wheel, two pair of cards, one loom, and one cow and calf: [*if a farmer*, the necessary farming utensils:] [*if a mechanic*, the tools of his trade:] the ordinary cooking utensils, ten dollars worth of provision; [c] the wearing apparel of himself and family, [d] and the arms, accoutrements and horse required by law, and used by him in performance of militia duty. [e]

Assignment to be indorsed on the Schedule. 138.

South-Carolina, }
District. }

I hereby assign and convey all the articles and property mentioned in my annexed schedule, (subject to the order made allowing me to retain certain articles,) to (his *or* their) heirs, executors, administrators and assigns, in trust for certain of my creditors, according to the provisions of the Acts of the General Assembly, commonly called the Insolvent Debtors Acts.

Given under my hand and seal, this day of

Signed, sealed and delivered }
in presence of } (L.S.)

Two witnesses, if lands in schedule. 1 McMul, 373.

Order of discharge. [f] 139.

To be entered on the minutes of C. P.

Exparte, } Petition for the benefit of the Insolv't Debtors' Acts.
C. D..., }

The petitioner having taken the oath prescribed, made an assign-

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a 53 cents. See 7th Sec. of Act 1783, 5 Stat. 79.

b 1st Sec. Act 1759.

c Act of 1823, 6 Stat. 214: 4 McC. 378.

d 1st Sec. of Act of 1759.

e Militia Act of 1841, 11 Stat. 210 § 161. 2 McC. 352: 3 Rich. 130.

f See § 6 of Act of 1833, 6 Stat. 493. § 2 of Act of 1836, 6 Stat. 556. See No. 147, and many decided cases.

ment and complied with the other requisitions of the law, it is ordered that he be discharged, and have all the benefits to which the Acts of the General Assembly for relief of Insolvent Debtors' may entitle him.

(Signed by Judge.)

If there be suggestion and trial, there will be other entries. See No. 45. 1 McMul. 66. 1 Rich. 3. Rice 268.

Prison Bounds. [a]

140. A schedule on oath of the prisoner's estate having been filed with the Clerk, no petition is necessary, if the election be made to proceed under the prison bounds act, rather than the insolvent debtors act; but it is the Clerk's duty (such election having been signified,) to give the notice within ten days. See Muldrow v. Bacot, 2 McMul. 359. To save all doubts as to the fact of the election, it will however be safe for the Clerk to require some distinct expression of the prisoner's intention, to be made in writing, by petition or other instrument.

141. *Form of the Notice.*

To be published on the Court-house door, and otherwise made public.

THE STATE OF SOUTH-CAROLINA, }
District. }

C. D., who is the custody of the Sheriff of district, by virtue of (process mesne or final in a civil case,) from the Court of Common Pleas for district, at the suit of A. B., having, in order that he may obtain his discharge from confinement under the Acts of the General Assembly, commonly called the Prison Bounds Acts, rendered on oath a schedule of his whole estate and effects, or of so much thereof as will pay and satisfy the sum really due on the action on which he is confined: public notice is hereby given, that unless satisfactory cause to the contrary be shewn, before [the Honorable one of the Judges of the Court aforesaid, at his Chambers,[b] *or* the Clerk of the Court aforesaid, for this district, in the Court-house of this district,] on next, at eleven o'clock in the forenoon, the property mentioned in the schedule aforesaid, will be assigned to the said A. B., and the said C. D. liberated according to the acts aforesaid.

Office of Common Pleas, }
District. } C. C. P.
day of }

142. If at the time appointed no accusation by the plaintiff, such as is mentioned in the 1st Sec. of the Act of 1833, be made, and no satisfactory cause to the contrary be shewn, the Clerk or Magistrate, (acting as Commissioner of Special Bail,) should require an affidavit, that ten days public notice has been given, and then annex to the schedule an order to the following effect:

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a See Acts 1788, 5 Stat. 78: 1833, 6 Stat. 491: 1836. 6 Stat. 556: 1840, 11 Stat. 121; 1841, 11 Stat. 153.

b Any Magistrate may hear, "in cases where the acting Clerk of the Court for the district cannot hear and determine such application, either on account of interest, sickness, or absence, and in no other cases whatever." 11 Stat. 20—32.

Order for assignment.[a] 143.

Public notice having been given, and no satisfactory cause to the contrary having been shewn, it is ordered, that the prisoner C. D., do make an assignment according to the Prison Bounds Acts.

(Signed by Clerk or Magistrate.)

Assignment.[b] 144.

South-Carolina, }
District. }

I hereby assign and convey the estate and effects mentioned in the annexed schedule to A. B. (the plaintiff,) at whose suit I am confined, subject, nevertheless, to all prior incumbrances.

Given under my hand and seal, this day of

In Presence of (L. S.)

Two witnesses, if land.

Order of discharge.[c] 145.

The prisoner C. D., having complied with the provisions of the Prison Bounds Acts, is discharged in conformity therewith.

C. C. P.

If the prisoner be a prisoner in execution, and after the order for assignment, refuse to assign and surrender, an order may be made that he be committed to the body of the jail, if the plaintiff require such order. Act of 1841, 11 Stat. 153 146.

If for ten days he refuse to make the assignment ordered, "he shall be re-committed to close confinement by the Sheriff, and so kept until, &c." for which an order or certificate from the Commissioner of special bail would seem to be necessary as authority for the Sheriff. Act of 1840, 11 Stat. 121.

By Act of 1833, whenever a prisoner, confined on mesne or final process, applying for the benefit of the (Prison Bounds) Act shall be accused by the plaintiff or his agent of fraud, or of having given an undue preference to one creditor to the prejudice of the plaintiff, or of having made a false return, or having gone without the prison walls or prison rules, as the case may be, it shall be lawful for the Judge, &c: to cause a Jury to be summoned. 147.

For forms follow the Act closely, and for many questions under this Act see decided cases.[d]

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a See Act of 1836, 6 Stat. 556, as to the creditors right to examine and cross-examine the applicant on oath, and as to the effect of the applicant's refusal to answer fully and directly.

b This assignment operates as a power to convey. Jones v. Crawford, 1 McMul. 373. After assignment, suit may be either in the name of the assignor or assignee, and payment to the assignor after notice will not avail to defeat an action in the name of the assignor. 1 Rich. 395.

c 6th Sec. Act of 1833, 6 Stat. 493; 2d Sec. Act of 1836, 6 Stat. 556.

d There is no appeal from the decision of the Commissioner of Special Bail, except under the Act of 1833, from the verdict of a Jury. 2 Speer 65. Rice 44,

Other judgment creditors, as well as the plaintiff at whose suit the arrest was made, are incompetent to be witnesses against the applicant. 2 Speer 636. Cheves 241.

Semb. a surety for the defendant, judgment against both, a competent witness for the defendant. 3 Rich. 97.

A preference to be undue must be fraudulent. Robinson v. Amy, 1 Rich. 239, and cases cited.

There must be an order for discharge made by the Commissioner, the verdict in favor of the applicant is not *ipso facto* a discharge. Harley v. Neilson, 1 Rich. 483.

The Jury may alter the verdict before separation. 1 Rich. 483.

148. *Bond to be taken by Commissioner of Bail, under Act of* 1833, *where the prisoner is discharged from confinement, if the verdict be in favor of the prisoner and the plaintiff appeal.*

Bond by prisoner and two or more sufficient sureties, in a penalty equal to twice the amount of the sum due to the plaintiff on the process, payable to the plaintiff, his executors, administrators, and assigns.

Recital.—Whereas, the above bound C. D., (*the prisoner,*) having been in the custody of the Sheriff of district, under (*the process*) at the suit of the said A. B., (*the plaintiff*) has made application for the benefit of the Prison Bounds Acts, and after accusation by the said A. B., there has been trial by a jury and a verdict in favor of the said C. D., from which the said A. B. has taken an appeal, and at his desire the said C. D. is now to be discharged from confinement upon giving this bond.

Now the condition of this obligation is such, that if the said C. D. shall

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In case of a mistrial, proceedings should be as if there had been no attempt at trial. Caldwell v. Metz, 2 Speer 94.

Amendment of the schedule is a matter for the discretion of the Commissioner; should be granted where no surprise or delay is effected by it. Craig v. Pinson, 2 Speer 180.

The Commissioner has a discretion as to postponement of trial, and additions to the suggestion. 2 McMul. 52.

If the schedule mention property, and there be an offer to assign whatever interest the prisoner has in it, there is no use of assailing the schedule by showing that the statement made of his interest is incorrect. He should be discharged without a Jury, if there be no other objection. 2 Speer 180.

Even a contingent remainder must be included in the schedule. 2 Speer 636.

The prisoner may be examined and cross-examined under the Act of 1836, (6 Stat. 556,) before the Commissioner, although no accusation be made or cause be shewn by the plaintiff, 2 McMul. 55; and if upon such examination it appears to the Commissioner, that the prisoner is not entitled to his discharge, it may be refused for a reasonable time, and the plaintiff be required to file a suggestion: after the suggestion, a Jury be summoned. *Semble.* Rosser v. Moye, 1 Rich. 64.

The suggestion should contain general charges and specifications: and there should be a finding as to every specification in the verdict. Hedley & Street v. Jordan, 2 Rich. 454. Case of Schroeder, 2 Strob. Further concerning the verdict, See 2 Speer 617; 1 Hill 291.

Whenever there is an accusation of fraud, or of other matter mentioned in the first section of the Act of 1833, the Commissioner is bound to refer the matter to a Jury, whether the process be mesne or final: the distinction formerly made, 2 Hill 433, is overruled by the Act. Cheves 27.

Making a fraudulent assignment is not like a conviction of a false schedule, an entire bar to any subsequent discharge. Cheves 241.

The *discharge* is a conclusive adjudication of all matters preceding, which might have been urged in objection to it. Hibler v. Hammond, 2 Strob.

After a discharge under the Prison Bounds Act, the defendant is not liable to be arrested again by the plaintiff from whose arrest he was discharged. 1 Hill 432.

As to order of the Commissioner to arrest again, see 1 Hill 432: Dud. 368: 1 McMul. 10. *Query*—Could the Sheriff, without an order, arrest a defendant who had broken bounds, now that the bounds are co-extensive with the district? See No. 146.

An applicant against whom the Jury find a verdict, may appeal: but is not entitled to his enlargement pending the appeal: he may, if no other order be made, remain within bounds on his former bond. Hall v. Taggart, Dud. 363: See Baker, Johnson & Co. v. Bushnell. 2 McMul. 21.

For the cases in which the benefit of the Acts for relief of insolvents is denied, see Smith & Blair v. Hogg, 2 Rich. 36, and cases cited.

In computing the 40 days, the day of the date of the bond is excluded. McElwee v. White, 2 Rich. 95.

The extreme sickness of the prisoner has been taken as an excuse for his not rendering his schedule within time. Blackwell v. Wilson, 2 Rich. 322. So sickness of attorney, Crovat v. Coburn, 3 McC. 14.

be forthcoming, and shall abide the decision of the Court of Appeals, upon the appeal aforesaid: then this obligation shall be void, or else remain in full force and virtue.

Signed, sealed and delivered in the presence of [L.S.] [L.S.] [L.S.]

If the appeal should be determined against the prisoner, he must be surrendered (the sureties having the right to surrender,) on or before the first day of the Circuit Court next after the appeal. If no surrender, the Clerk must issue *Scire Facias*, (as in case of estreated recognizance.) If surrender, then new trial by Jury. If verdict be against prisoner he is not entitled to discharge on bond. *See Dud.* 370.

Scire Facias on above bond: under Act of 1833. 149.

THE STATE OF SOUTH-CAROLINA, District. } *The State of South-Carolina:*

To all and singular the Sheriffs of the said State:

Whereas, C. D., having been in the custody of Sheriff of district, under (process) at the suit of , made application for the benefit of the Prison Bounds Acts, and after accusation by the said A. B., there was a trial by a Jury, a verdict in favor of the said C. D. and an appeal by the said A. B.: and whereas, according to the Act of the General Assembly in such case made and provided, the said C. D., with E. F. and G. H. his sureties, on the day of in the year of our Lord one thousand eight hundred and forty by their bond of that day, became bound to the said A. B. in the penal sum of dollars, conditioned that the said C. D. should be forthcoming, and should abide the decision of the Court of Appeals, upon the appeal aforesaid: And whereas, now, on the application of the said A. B., the Court is given to understand, that the Court of Appeals (at Columbia in May last) determined the said appeal against the said C. D., and that the said C. D. was not surrendered before the first day of the Circuit Court of Common Pleas and General Sessions, which was held for district aforesaid, next ensuing the determination of the said appeal, to-wit: on at Court-house.—You and each of you are hereby commanded, to summon the said C. D., E. F. and G. H., to appear before the Court of Common Pleas and General Sessions for district, to be holden at on next, to shew cause, if any they can, why the penalty of their bond aforementioned should not be forfeited, and execution be had against them, pursuant to the Act of the General Assembly in such case made and provided. And have you there this writ.

Witness Esq., &c.

(Seal of Court.) D. H., C. C. P.

Jurors.

Writ of Venire Facias. [a] 150.

THE STATE OF SOUTH-CAROLINA, District. } *The State of South-Carolina:*

To the Sheriff of district, Greeting:

You are hereby strictly required and commanded to summon the

[a] 11 Stat. 73: 93d Rule of Court; State v. Dozier, 2 Speer, 211. State v. Voss, 1 Rich. 188.

several persons named in the panel to this writ annexed, [a] to be and appear before the Court of Common Pleas and General Sessions for the district aforesaid, to be holden at on next, at 10 o'clock in the forenoon, to serve as Grand (*or* Petit) Jurors. Herein fail not, on pain of the penalties that will fall thereon.

Witness D. H., Esq., Clerk of the said Court at this day of in the year of our Lord one thousand eight hundred and and in the year of the Sovereignty and Independence of the United States of America.

(Seal of the Court.) D. H., C. C. P.

151. *Scire Facias against a defaulting Juror for not attending Court.* [b]

STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To all and singular the Sheriffs of the said State:

You and each of you are hereby commanded to summon C. D., to shew cause by affidavit at 10 o'clock, on the first day of the next succeeding Term of the Court of General Sessions and Common Pleas, for district, to be holden at on Monday next, why he should not be fined according to law,—* for failing to attend at (March) Term of the Court aforesaid, and serve as a Grand *or* (Common Pleas and Petit) Juror, according to the summons served upon him.

Witness Esq., Clerk of the said Court at &c.

D. H., C. C. P.

152. *For not attending to a Magistrate's summons.*

(*As in No.* 151 *to* —*) for failing to attend on last when duly summoned by order of Esq., Magistrate, to form a component part of a Court, which the said Magistrate was authorized to organize. [c]

153. *Fi. Fa. for fine imposed upon a defaulting juryman.*

THE STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To all and singular the Sheriffs of the said State, Greeting:

You and each of you, are hereby required to levy of the goods and chattels, houses, lands, tenements, hereditaments, and real estates of C. D., the sum of [d twenty dollars, and seven per cent. on his last general tax,] which, at a Court of Common Pleas and General Sessions, held for the district aforesaid, at on was, after due proceedings had thereon, by the judgment of the said Court imposed upon the said C. D. as a fine for his default in not attending the said Court as a (Grand) Juror at Term A. D. 1848, after having been duly summoned: and also the sum of for the costs and

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a Panel annexed contains names of 24 Grand Jurors, or 48 Petit Jurors. For summons and return, see Sheriff Nos. 343, 344.

b Clerk's Act 1839, 11 Stat. 74.

c § 11 of Magistrate's Act of 1839, 11 Stat. 22.

d 1799, 7 Stat. 291.

charges of the proceedings aforesaid—all which appears by the record thereof remaining in the said Court.

And have you the said monies, together with this writ, before the Clerk of the said Court according to law.

Witness D. H., Esq., &c.

(Seal of Court.) *Solicitor.*

See Note to No. 155. No. 350.

Papers in the Sessions.

Sci. Fa. upon Recognizance.[a] 154.

THE STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To all and singular the Sheriffs of the said State, Greeting:

Whereas, A. B., C. D. and E. F. lately entered into Recognizance, to-wit, A. B. in the penal sum of one thousand dollars, and C. D. and E. F. each in the penal sum of five hundred dollars, conditioned that the said A. B. would appear at the Court of General Sessions, for the District of at , to testify in behalf of the State, (*or*, to prosecute, *or*, to answer a bill of indictment, *or*, to receive sentence, &c.,) in a certain prosecution, had against for [murder, assault and battery, &c.] and not depart without leave of the said Court, which said Recognizance has not been discharged; and now it is said, that the said Recognizance has been forfeited, for that the said A. B. failed to appear, as therein bound to do, at the (March) term of the said Court, in the year 18 . These are, therefore, to command you, in the name of the State, that you summon the said A. B., C. D. and E. F. personally to be and appear before the Court of General Sessions, to be holden on the day of next, at for the district of to shew cause, if any they have, why the said Recognizance should not be estreated, and adjudged to be forfeited; judgment be confirmed and execution issue against them, pursuant to the Act of the General Assembly, in that case made and provided. And have you this writ before the Clerk of the said Court, fifteen days next before the sitting thereof.

Witness Esq., Clerk of the said Court, at the day of in the year of our Lord one thousand eight hundred and and in the year of the Sovereignty and Independence of the United States of America.

Solicitor.

Fi. Fa. upon Judgment confirmed on Recognizance.[b] 155.

STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To all and singular the Sheriffs of the said State, Greeting:

Whereas, a Recognizance lately entered into by A. B., C. D. and E. F., for the appearance of A. B. at the Court of General Sessions,

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a 1787, 5 Stat. 13; 1839, 11 Stat. 75 § 16.

b 1787, 5 Stat. 13; 1839, 11 Stat. 75 § 16.

for district, as [a witness, *or*, prosecutor, *or*, a party prosecuted] in a prosecution against for , was forfeited by non-compliance with the condition thereof: and, after a Scire Facias served upon the said , no satisfactory cause to the contrary having been shewn, at a Court of General Sessions held for the said district, on last, judgment on the said Recognizance was confirmed, to-wit, for the sum of dollars, against the said A. B., and for the sum of dollars against the said C. D. and E. F. severally, besides the costs of the said Scire Facias and proceedings had thereon:

You and each of you are, therefore, hereby commanded without delay, that of the goods and chattels, houses, lands tenements, and hereditaments of the said A. B. [a] you levy the said sum of dollars, and also the further sum of for the costs aforesaid.

And have you the said monies, together with this writ, before the Clerk of the Court of General Sessions for the district aforesaid, according to law.

Witness D. H., Esq. Clerk of the said Court, at &c.

(Seal of Court.) *Solicitor.*

156. *Ca. Sa. for fine and Costs.*

STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To all and singular the Sheriffs of the said State, Greeting:

You and each of you are hereby commanded to take C. D., if he shall be found within your districts, severally, and him safely keep, so that you have his body before the Court of General Sessions, for district, to be holden at to satisfy the sum of dollars, for a fine, and the further sum of dollars for costs and charges, which sums, in a prosecution lately had in the said Court against the said C. D. for (assault,) the said C. D. has been adjudged to pay as appears by the records of the said Court.

And have you this writ, and the said monies before the Clerk of the said Court according to law.

Witness D, H., Esq., Clerk of the said Court, at day of

See Note to No. 155. No. 350.

157. *Bench Warrant.*

STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To all and singular the Sheriffs, Deputy Sheriffs, Constables, and other Peace Officers of the said State, Greeting:

Whereas, at the last term of the Court of General Sessions and Common Pleas for the district aforesaid, it was, amongst other things, Ordered, that a Bench Warrant should issue for the arrest of C. W.,

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a Separate writs of Fi. Fa. seem more convenient and conformable to the Act of 1737, than a common one against principal and sureties for diverse sums.

After return of the Fi. Fa. there may be a Ca. Sa. See No. 350. Every part of the personal estate, according to the Act, must be sold under this Fi. Fa. before any negro can be sold. Fi. Fa. for a *fine* is regulated by the same Act. See No. 350.

against whom [a true bill for murder has been found.] These are, therefore, to command you, and every of you, to make diligent search after the said C. W., and him to take and safely keep until he be delivered to the keeper of the Common Jail of this district, or discharged by due course of law. And this shall be a good and sufficient warrant for your doing so, and for the keeper of the said jail receiving the said C. W. from you, and keeping him safely until he be discharged by due course of law.

Witness D. H., Esq. Clerk of the said Court, at &c.

(Seal of the Court.)

Recognizance, for the maintenance of a Bastard child. [a] 158.

Payable to the State by C. D., (the father of the child,) and two good and sufficient sureties. Penalty $300 each.

Recital.—[Whereas, at a late term of the Court of General Sessions for district, the said C. D. was convicted of] being the father of a (male) bastard child, begotten on the body of E. F. (spinster) and born day:

Condition.—Now the Condition of this Recognizance is such, That if the said C. D. shall annually pay twenty-five dollars for the maintenance of the bastard child aforesaid, until it attains the age of twelve years, and shall save harmless the district aforesaid, then this Recognizance, &c.

Query.—When shall the annual payment commence, if the conviction be long after the birth of the child, and the district have received no harm? See State v. M'Cleary, MSS. Columbia, December 1829. 1 Rice's Dig. 110 § 7.

If the Recognizance be given before conviction, in the recital, instead of what is within brackets, say,

"Whereas, the said C. D. has been charged with."

Fi. Fa. after failure of a defendant convicted of Bastardy to enter into Recognizance. [b] 159.

THE STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To all and singular the Sheriffs of the said State, Greeting:

Whereas, at a Court of General Sessions lately held for the district aforesaid, C. D. was convicted of being the father of a (male) bastard child, begotten on the body of E. F., (spinster) and born day : and the said C. D. having failed to enter into recognizance as required, is by the order of the Court aforesaid liable to execution:

You and each of you are, therefore, hereby commanded without delay, to levy of the goods and chattels, houses, (&c.) of the said C. D. the sum of three hundred dollars which he has been adjudged to pay for the maintenance of the said child, and also the sum of dollars, for the costs and charges which have accrued on the prosecution of the said C. D. for the matter aforementioned. And have you the said monies, together with this writ, before the Clerk of the said Court, according to law.

Witness D. H., Clerk of the said Court, &c.

(Seal of Court.)

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a See No. 77, and Statutes, and cases cited.

b Act of 1847, 11 Stat. 436.

160. *On the execution should be indorsed:*

"When the defendant has satisfied the costs and the instalment of twenty-five dollars, which shall next fall due, [a] this execution shall be stayed until another instalment falls due, and so on annually: the instalments being twenty-five dollars, payable annually on the birth day of the child, until it attains the age of twelve years. day 18 .
D. H., C. C. P."

The defendant is liable to execution "as defendants convicted of misdemeanors now are." See Note 155 and No. 350.

161. *Execution against Players, Showmen, &c., who have not paid the tax required by law.* [b]

THE STATE OF SOUTH-CAROLINA, }
District. } *The State of South-Carolina:*

To any Sheriff or Constable of the said State:

Whereas, A. B. on at in the district aforesaid, (represented publicly, for gain, part of a stage play, *or*, exhibited for gain, a certain show called) without having paid (ten dollars) the tax required by law to be paid before such representation (exhibition.) These are to require you without delay, either to levy of the goods of the said A. B. the sum of (twenty) dollars, or to take the body of the said A. B. and him safely keep to answer to the State for the sum of (twenty) dollars: And this writ with the said monies, if made, to return according to law, to the Clerk of the Court of Common Pleas and General Sessions for district aforesaid.

Witness Clerk of the Court of General Sessions and Common Pleas, this day of

Money to be paid into Public Treasury. 11 Stat. p. 246 § 3.

Appointment of Guardian of Free Person of Color. [c]

Petition of Person of Color.

162.

SOUTH-CAROLINA, }
District. }

To D. H., Esq., Clerk of the Court of Common Pleas and General Sessions for the district aforesaid.

I, A. B., a male free person of color, over the age of fifteen years, to-wit, of the age of years, humbly pray that Mr. E. F., a freeholder of the said district, may be appointed my Guardian.

Witness: A. B. (signed by mark or otherwise.)

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a Before he can satisfy this, must not all previous instalments be paid? The Clerk does not decide.

b Act 1839, 11 Stat. p. 73 § 34. Act of 1843, 11 Stat. p. 246 § 3.

c Act of 1822, 7 Stat. p. 462 § 7; 1839, 11 Stat. p. 77 § 25; 1799, 7 Stat. 299 § 34; 1740, 7 Stat. 398 § 1.

Acceptance by Guardian. 163.

I, E. F., do hereby accept the trust as Guardian of the above named A. B., and certify, that he is a free person of good character and correct habits. E. F.

Order. 164.

The prayer of the petitioner is granted and the appointment made as prayed. C. C. P.

The above Nos. 162—164 to be filed.

Certificate may be given to the Guardian and Free Person of Color, one or both, as follows: 165.

SOUTH-CAROLINA, }
District. }

I, D. H., Clerk of the Court of Common Pleas and General Sessions, do hereby certify, that this day, E. F. was regularly appointed Guardian of A. B., a male free person of color, aged about years.

(SEAL.) In witness whereof, I have hereunto set my hand and seal of office, this day of A. D. 18

D. H., C. C. P. & G. S.

Elections.

Notice of Election.[a] 166.

To be posted at the Court-house door and five other public places in the district, and also to be advertised in newspaper of the district. Act of 1839, p. 24 § 1.

STATE OF SOUTH-CAROLINA, } Office Court of General Sessions and
District. } Common Pleas.

I, D. H., Clerk of said Court, in pursuance of the directions of the Act of the Legislature, in such case made and provided, do hereby give public notice, that an election for for district, will be held on Monday the day of next, at the usual places of election throughout the said district.

Witness my hand at this day of A. D. 18

D. H., C. G. S. & C. P.

Notice to the Managers of Election:[b] 167.

STATE OF SOUTH-CAROLINA, } Office Court of General Sessions and
District. } Common Pleas.

To O. P., R. S. & T. M., Managers of Election, at (Timber Cross Roads) in the said District.

By direction of an Act of the General Assembly, I hereby notify you severally to attend at the place of election, for which you are Man-

a Notice must be given at least two months before the expiration of the time of the incumbent, and at least 30 days before the election: and the Monday fixed, as the day of election, must be after the expiration of the 30 and before the expiration of 60 days.

b See Act of 1839, 11 Stat. 24, prescribing the mode of electing Clerks, Sheriffs, and Ordinaries. Act of 1846, 11 Stat. 362, prescribing the mode of electing Tax-Collectors.

agers, on the Monday of next, open the polls and hold an electton for for district, to fill the vacancy which will occur in said office, by the expiration of the term of the present incumbent.

It will be your duty to attend as directed, and open the polls between the same hours, and in other respects conduct the election in the same manner as is prescribed for the election of members of either Branch of the Legislature, (except that the polls must be opened on Monday only [a]): also to meet on the Wednesday after the votes are received, at the Court-house of district, count the votes, declare the election, if no notice of intention to contest it be given, and certify to the Governor the name of the person who may be duly elected.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at this day of

D. H., C. C. P. & G. S.

For further information the Managers will see reports and resolutions of the General Assembly of 1841, p. 107.

Satisfaction of Judgment.

168. *Satisfaction entered by Plaintiff or his Attorney.*

THE STATE OF SOUTH-CAROLINA, District. } In the Common Pleas.

A.... B...., v. C.... D...., } Roll No. Judgment entered day of 18

Afterwards, to-wit, this day of in the year of our Lord one thousand eight hundred and comes the said A. B., the plaintiff above named, [by A. K. his Attorney,] and acknowledges to have received of, and from the said C. D., full satisfaction of the [debt and] damages, costs [b] and charges aforesaid. Therefore, be the said C. D., therefrom, henceforth, forever discharged; and so forth.

169. *Satisfaction entered by Clerk under order of Court.* [c]

[Copy the Order on the record.]

And now, to-wit, this day of according to the order above copied, it is declared that full satisfaction hath been made to the above named (Plaintiff,) of the [debt and] damages, costs and charges aforesaid. Therefore, be the said (Defendant) therefrom, henceforth, forever discharged; and so forth.

D. H., C. C. P.

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a Act of 1844, 11 Stat. 296. As to contest, see State v. Cockrell, 2 Rich. 6; Cheves 241.

b As to the effect on costs, see Sharlock v. Oland, 1 Rich. 207.

c 1817, 6 Stat. 61. 1839, 11 Stat, 76. No. 42.

Satisfaction entered by the Clerk, after execution has been returned satisfied. [a] 170

The Fi. Fa. (*or* Ca. Sa.) in this case having been returned by T. S., Sheriff, fully satisfied, satisfaction is accordingly entered on the record. Be the Defendant henceforth forever discharged.

D. H., C. C. P.

Naturalization. [b]

Declaration of Intention, before Clerk. [c] 171

UNITED STATES OF AMERICA.

State of South-Carolina.

Office Court Common Pleas and General Sessions, } District. }

Before me, A. B., Clerk of said Court, personally appeared E. F., a native of , about the age of years, who being duly sworn according to law, upon his solemn oath, declares, that it is, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty, whatever, and particularly to , of whom he is a subject.

Sworn to before me this day of A. D., } E. F.

A. B., C. G. S. & C. P. }

This declaration may also be made in open Court.

Certificate of Declaration of Intention. 172

UNITED STATES OF AMERICA.

State of South-Carolina. } District. }

Office, Court of General Sessions of the Peace, and of Common Pleas, for District.

I, A. B., Clerk of said Court, (the same being a Court of Record, having Common Law jurisdiction, and a Clerk and Seal,) do hereby certify, That E. F., a native of , about the age of years, appeared before me in the office of said Court, and being duly sworn according to law, upon his solemn oath, did declare, that it is, *bona fide*, his intention to become a citizen of the United States, and to re-

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a 1839, 11 Stat. 76 § 19.

b As to an Alien's rights to take, hold and sue for land, see 1 Speer. 356 and cases cited; 2 McMul. 304; Act of 1807, 5 Stat. 547; 1 Mills C. R. 411; 2 Mills C. R. 18. Concerning an Alien wife, 1 Speer 525; 1 M'C. 137. Irregularities in the proceedings of naturalization, 2 N. & M. 351; 1 M'C. 137. Children born abroad of citizen parents, 1 N. & M. 294. Foreigners resident here before 1776, 3 M'C. 29. British subject born before 1776, resident abroad, 1 Tr. C R 61; S. C. 3 Brev 29. A naturalized heir and nearer next of kin, 2 N & M'C 293; 1 Speer 536.

c Act of Congress 1802, chap. 28, §1, §3; 1824 chap. 186, §3, §4.

nounce forever all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty, whatever, particularly to , of whom he is a subject.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at , this day of , in the year of our Lord , and in the year of the Sovereignty and Independence of the United States of America.

173. Notice of intention is unnecessary if Alien came to this country prior to the 12th of June, 1812, and has since continued to reside here. Such residence must be proved to the satisfaction of the Court, by two citizens, witnesses, on oath, whose names, together with the place where the applicant has resided for the last five years, are to be set forth in the record of the Court. Act of Congress, 1828, ch. 116, § 2.

Notice of intention is also dispensed with if applicant arrived in this country under the age of eighteen years, and will declare, on oath, and prove to the satisfaction of the Court, at the time of his application, that, for three years next preceding, it had been, *bona fide*, his intention to become a citizen: and, in all other respects, comply with the laws in regard to naturalization. Act of Congress, 1824, ch. 186, §1. In all other cases a previous declaration of intention is necessary. This declaration may be made before a Clerk of a State Court, being a Court of Record, &c., as well as before a Judge. Act of Congress 1802, ch. 28, § 1, § 3; 1824 ch. 186, §3.

The party, upon application for citizenship, must satisfy the Court by other proof than his own oath, that he has resided five years, at least, in the United States, and one year at least, in the State where he applies. And, if he arrived subsequently to the peace of 1815, his residence must have been continued for five years next preceding his admission, without being, at any time, during that period, out of the limits of the United States. He must satisfy the Court, that he is a man of good moral character, attached to the principles of the Constitution of the United States and well disposed towards the good order and happiness of the same. He must, on oath, abjure his native allegiance, and renounce his title of nobility, if any he hath, and take an oath to support the Constitution of the United States.

174. *Petition for Citizenship.*

The United States of America.

State of South-Carolina. } In the Court of Common Pleas and
District. } General Sessions.

To the Honorable , one of the Law Judges of the said State, presiding in the said Court.

The petition of A. B., aged years, following the profession or occupation of , Respectfully sheweth: That your petitioner was born in : that he arrived in the United States of America, to wit: at on day and has ever since resided within the United States, to wit, [years in (New York) and since] at in this State, *(shewing at least five years residence in the United States, and one year, last past, in this State)*: that on day in the year of our Lord, (1847) *(at least two years before this petition)* he [in the Court, *or*, before the Clerk of the Court] of Common Pleas and General Sessions for District in this State *(or any other Court of Record a in the United States)* declared on oath his *bona fide* intention to become a citizen of the United States and renounce all foreign allegiance, in manner and form as is required by law, (as will more fully appear by the certificate [of the Clerk of the said Court, *or*, of the said Clerk] herewith exhibited).

That your Petitioner is sincerely attached to the Constitution of the United States, and well disposed to the good order and happiness of

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a Any Court having Common Law jurisdiction and a Clerk and Seal.

the same: of which and of the required residence, evidence is contained in the certificate hereto annexed. That he has never borne any hereditary title, or been of any order of nobility whatever.

He, therefore, prays that the oath, which in such case is provided, may be administered to him, and that he may be admitted as a citizen of the United States of America.

Be it so. (Signed) A. B.
(the Judge.)

Certificate as to residence and character. 175.

We, the subscribers, citizens of the United States of America, do hereby certify, that we have known the petitioner, A. B., for years last past, during which time he has resided within the United States, to wit: at and within this State upwards of one year. That he has behaved during that time, as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

Oath of allegiance and abjuration. 176.

The United States of America.

State of South-Carolina. } In the Court of Common Pleas, and
District. } General Sessions.

I do solemnly swear, that the contents of my Petition are just and true; that I will support the Constitution of the United States of America; and that I do hereby absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate State, or Sovereignty whatever, and particularly to of whom I was born a subject.

And I do further declare, that I have never borne any hereditary title, or been of any order of nobility.

Sworn to in open Court, this }
day of 18 } A. B.
D. H., c. g. s. & c. p.

Certificate of Citizenship. 177.

United States of America.

State of South-Carolina, } Court of General Sessions and
District. } Common Pleas.

To all to whom these Presents may come: Greeting.

I, A. B., Clerk of the Court of General Sessions and Common Pleas for District, do hereby certify, That, at a Court of General Sessions and Common Pleas, holden for the District of in the State aforesaid, present, the Honorable , one of the Law Judges of the said State, presiding in the said Court, on the day of , Anno Domini, , E. F., a native of , by profession a , appeared in open Court, and made application to be made a citizen of the United States of America; and he, having complied with all the conditions and requisites of the Acts of Con-

gress, in such case made and provided, for establishing an uniform rule of naturalization, the oath to support the Constitution of the United States of America, and to renounce all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty, whatever, and particularly all allegiance and fidelity to , was administered to him, in open Court, and he, the said E. F., was admitted to citizenship: and is, by virtue thereof, and the premises, declared and enrolled a citizen of the United States of America.

In testimony whereof, I have hereunto subscribed my name, and affixed the Seal of the said Court to these Presents, at , in the District and State aforesaid, this day of , in the year of our Lord , and in the year of the Sovereignty and Independence of the United States of America.

178 *Final Order—to be written on the Petition, and copied on the Journal of the Court.*

Ex parte E. F. Petition for Citizenship.

The Petition and accompanying evidence having been heard, and it appearing that E. F. is, according to the naturalization laws, entitled to become a citizen of the United States, It is ordered that the prayer of the petitioner be granted. Therefore, the oath of allegiance and abjuration, in such case made and provided, is administered to the said E. F., in open Court: and it is ordered, that he be admitted and enrolled as a citizen of the United States of America, and that the proceedings in this matter be filed by the Clerk, and be of record.

(Signed by Judge.)

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179 ## *Denizenship.* [a]

The State of South-Carolina.

I, A. B., do solemnly swear, that I was born at , in , on day of , A. D., : and resided there until when I arrived in the United States at , and after years residence at in the State of removed to in this State of South-Carolina, on or about , since which last mentioned day I have resided in this State, and now reside therein at

I do further solemnly swear (*or*, affirm) that I will be faithful and true allegiance bear to the State of South-Carolina, so long as I may continue to reside therein; and that I will preserve, protect and defend the Constitution of this State, and of the United States. So help me God!

Sworn to and subscribed this day of A. B.
A. D., at
Before me (Judge).

The State of South-Carolina.

I, E. F., one of the Judges of the Court of Common Pleas for the State aforesaid, do hereby certify, that A. B., by his foregoing declaration on oath, made before me, appears to be now a resident of this

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a 1799, 5 Stat. 355.

State: to be of the age of years, and to have formerly resided at , and at , until the year , when he removed to this State, in which he has since resided at : and further, that the said A. B. hath taken and subscribed before me the oath of allegiance, to the end that he may be deemed a denizen of this State, and be enabled to purchase and hold real property within this State, and be entitled to the like protection from the laws of this State as citizens are entitled unto. Given under my hand at , this day of in the year of our Lord, one thousand eight hundred, &c.

The certificate must be recorded in the office of the Secretary of State, either in Charleston or Columbia, within sixty days, or all benefit under it will be lost.

When the certificate is given to a family, it must contain the name and age, place of nativity and former residence, of each member of the family, all declared on oath, by *the head of the family*.

No right of voting is conferred by denizenship.

Escheats.[a]

Notification of Escheator. 180.

THE STATE OF SOUTH-CAROLINA, }
District. }

To the Honorable ——— ———, one of the Judges of the Court of Common Pleas, of the State aforesaid:

I, A. B., Escheator for (District) in the State aforesaid, do hereby notify unto your Honor, that, according to my knowledge and belief, and the information of others, a certain lot of Land, situate &c., hath become escheated to the State aforesaid by the death of E. F., the person last seized in fee simple thereof: the said E. F. having died without leaving any person who can lawfully claim such Lot of Land either by purchase or descent from him the said E. F., the last proprietor thereof. Wherefore, I the said A. B., Escheator as aforesaid, do hereby issue this my notification of the said supposed escheated Lot of Land to your Honor, to the intent, that, at the next meeting of the Court of Common Pleas for the District aforesaid, you may cause the jury thereof, being first duly sworn, to proceed and make a true inquest of the said supposed escheated Lot of Land and a true verdict make thereon, according to the Act of Assembly in such case made and provided.

A. B., Escheator for

This notice must be issued to the Judge at least two months before the next meeting of the Court for the District where the lands lie.

Inquisition of Escheat. 181.

STATE OF SOUTH-CAROLINA, }
District. }

An Inquisition of Escheat, taken at the usual place of Judicature, in the Court House in , in the District and State aforesaid, the day of , in the year of our Lord , pursuant

a 1787, 5 Stat. 47, §2. 1805, 5 Stat. 507.

to an order of the Honorable the Court of Common Pleas, made on the notification of A. B., Escheator for in virtue of the Act of the General Assembly of the State, entitled "An Act to appoint Escheators and to regulate Escheats," and more particularly in virtue of further Acts of the said General Assembly, viz: (*The Act of* 1805, 5 *Stat.* 507, *and the Act or Acts granting the lands supposed to be escheated to the body corporate which has appointed the Escheator*) Upon the oaths of , good and lawful men of the said District drawn by lot, pursuant to the form of the Act of the General Assembly of the said State, for the present Term of the Court of Common Pleas, for 18 , who, being charged and sworn to enquire for and in behalf of the State, of and concerning the Lands, Tenements and Hereditaments of which E. F., late of , died seized and possessed: It being heretofore notified by the said A. B., Escheator aforesaid, that the said E. F. died seized and possessed of certain real estate within the said (District) not having in his life time made any disposition thereof, and without leaving any person who can legally claim the same by descent or purchase. The said Jurors so charged as aforesaid and sworn, do, upon their oaths aforesaid, say, that the said E. F. was born at and died in on the day of Anno Domini, one thousand eight hundred and , and that, at the time of his death, he was seized and possessed of a Lot of Land situate (&c.) And they are not informed, nor does it appear in anywise, nor hath it come to their knowledge, that the said E. F. at the time of his death left any person or persons who can legally claim, by descent or otherwise, the said Lot of Land. And so the jurors aforesaid, upon their oaths, say, that the said E. F. died on the day of Anno Domini , without leaving any person or persons who can legally claim by descent or purchase. And that the said Lot of Land, of which he was seized and possessed, is become escheated.

In witness whereof, we, the Jurors, have to this inquisition set our hands and seals the day and year first aforesaid.

(Signatures and seals of Jurors.)

182. *To be entered on the Journal of Common Pleas.*

Jury No. 2, having been first duly sworn, proceeded to make inquest of escheated lands, and returned the following verdict—to-wit: *(copy the whole Inquisition, No.* 181.*)*

183. *Judge's Certificate: to be annexed to the Inquisition.*

State of South-Carolina, } District. }	In the Common Pleas, } Term, 18 }

In pursuance of the Act of the General Assembly, entitled "An Act to regulate Escheats,"[a] I, , one of the Judges of the Honorable the Court of Common Pleas, presiding at this present Term, do hereby certify, That the Jury impannelled for the trial of causes thereat, being first duly sworn to proceed and make true inquest of

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[a] 1787, 5 Stat. 47, § 2.

all such supposed escheated lands, as should be subjected to their investigation, by the Escheator of , and a true verdict make thereon, did return to the said Court, the within verdict and inquisition by them had and made on the within case of the Real Estate of E. F., then and there submitted to their investigation by the said Escheator. Given under my hand and seal this day of A. D.

The inquisition and certificate must be recorded by the Escheator, and within two months from the date of the inquisition, be returned to the Clerk, to be filed and kept as a record of Court.

Clerk's Advertisement. [a] 184

STATE OF SOUTH-CAROLINA, District. } Office Court of Common Pleas.

Whereas an inquest of Escheat hath been returned into this office, whereby, it appears, that E. F., late of who was born in (*name place of birth,*) and died about the year , was seized and possessed at the time of his death of a lot of Land, situate (*describe the land particularly,*) without having in his lifetime made any disposition thereof, and without leaving any person who can legally claim the same:—Now, in pursuance of the directions of the Act of Assembly, in such case made and provided, the Heirs of the said E. F., or others claiming under him, (if any there be), are hereby required to appear and make claim within eighteen months from the date hereof.

Witness my hand at this day of A. D.,

Clerk's process to Escheator. [a] 185

STATE OF SOUTH-CAROLINA, District. } In the Common Pleas.

The Escheator for
vs.
The Real Estate of E. F.

Whereas an inquest of Escheat in the above case hath been made, certified, returned and advertised according to law, and no person, within twelve months from the last date of said advertisement, hath appeared and made title to the lot of land, described in said inquisition as a lot of Land, &c., whereof E. F., the last proprietor, died seized in fee, without leaving any person who can lawfully claim the same either by purchase or descent from him the said E. F. Now, in pursuance of the directions of the Act of Assembly, in such case made and provided, the said Lot of Land is hereby pronounced to be escheated and vested according to law. And the Escheator for is hereby directed to sell and convey the same upon the usual notice. In witness whereof, I have hereunto set my hand, and caused the Clerk of the Court of Common Pleas for the District aforesaid, to affix the seal of the said Court this day of A. D.,

(Sig. by the Judge).

As to the notice of sale to be given by Escheator, see 1787, 5 Stat. 47, § 4.

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a 1787, 5 Stat. 47, § 3. 1839, 11 Stat. 77 § 24.
b 1787, 5 Stat. 47, § 3. 1839, 11 Stat. 77 § 24.

186. *Traverse, &c.*

For the mode of proceeding in case any claimant comes in, see 6th Sect. of the Act of 1787. There must be a petition setting forth the claim—a traverse of the Inquisition: lands committed to the claimant, upon good evidence of his title to hold, until the right be found, and sufficient security by him:—issue upon the traverse—venire—trial—and judgment:—costs to follow finding against Escheator, if Jury think there was no probable cause for supposing the lands escheated,

Clerk—Ex-officio Register of Mesne Conveyances. [a]

187. *Satisfaction of Mortgage: entered by the Mortgagee.*

To be entered in the Registry which contains the mortgage, with reference made to the page where the mortgage will be found, and on that page, reference to the page where the satisfaction will be found.

THE STATE OF SOUTH-CAROLINA, }
District. }

I acknowledge, that I have received full satisfaction of this mortgage [*or*, of the mortgage recorded—book, page from C. D. to A. B. whose Executor I am,] (and of the bond, [*or*, note] it was intended to secure,) and C. D. (*the mortgagor*,) is therefrom hereby discharged.

Witness my hand and seal, &c. [L. S.]

In presence of (*two witnesses.*)

Probate to be made as of an ordinary deed.

This form is certainly safe, and on many accounts convenient. Against the usage o permitting the mortgagee, or his attorney, to write satisfaction across the mortgage as registered, there are strong objections. It is inconsistent with the proper neatness of a registry, and might lead to abuses. Suppose some one should falsely personate the mortgagee, or should act under a pretended power from him. Is the Register to be the judge of all the questions that might arise? And if he should be deceived or dishonest, is a defacing of the copy in the Registry to destroy the original, or only to mislead third persons who rely upon the entry of satisfaction? If a separate acknowledgment of satisfaction, executed with like solemnity as the obligation was, and proved by a witness, be recorded, then the record of it stands with all the presumptions in its favor, which are made in favor of other such records, to supply the absence or loss of the original, under the same circumstances as would the record of any other deed. See Note to No. 189.

188. *Satisfaction of a Mortgage, entered by the Clerk under order of Court.* [b]

To be entered on the margin of the page where the mortgage is registered, or upon another page with references as in No. 187.

SOUTH-CAROLINA, } In the Common Pleas. Term 18 .
District. }

[*Copy of the order of Court.*]

According to the order above copied, satisfaction of this mortgage (of the mortgage therein mentioned) is hereby entered, and the said *(Mortgagor)* is therefrom hereby discharged.

D. H., *Clerk & Ex-officio Reg. M. C.*

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a 11 Stat. 80 § 44. See No. 203.

b See No. 43; 1817, 6 Stat. 61: 1839, 11 Stat. 76.

Common probate of Deed. [a] 189.

STATE OF SOUTH-CAROLINA, }
District. }

I, A. B., *(one of the witnesses,)* solemnly swear, that I was present and saw *(the maker of the deed,)* sign, seal, and, as his act and deed, deliver the within [Indenture: Release: Conveyance: Acknowledgment of satisfaction: Instrument of writing:] to and for the uses and purposes therein expressed, and that C. D., *(the other witness)* and myself subscribed our names thereto as witnesses of its due execution.

Sworn to and subscribed this day of &c. } A. B.
Before Clerk, *or* Magistrate. }

See 11 Stat. 80, for further directions.

Renunciation of Dower. [b] 190.

To be recorded.

STATE OF SOUTH-CAROLINA, }
District. }

I, D. H., Clerk of the Court of Common Pleas and General Sessions, and *ex officio*, Magistrate for the district aforesaid, do hereby certify unto all whom it may concern, that E. B., the wife of [the within named] A. B., did this day appear before me, and upon being privately and separately examined by me, did declare, that she does freely, voluntarily, and without any compulsion, dread or fear of any person, or persons whomsoever, renounce, release, and forever relinquish unto [the within named] C. D., his heirs and assigns, all her interest and estate, and also all her right, and claim of dower, of, in or to all and singular [the premises within mentioned and released.]

In witness whereof, she has signed this in my presence.

Given under my hand and seal, this } E. B.
day of, &c. }

[L. S.] D. H., Clerk & *Ex off.* Magistrate.

If the renunciation be on a paper separate from the release, omit the words in brackets, and after "singular," add, "the land and appurtenances described and conveyed by a deed from A. B. to C. D., bearing date the day of (and recorded in, &c.") with other sufficient terms of description.

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a Copy in the Registry, is good evidence, on the proof of loss. See Statutes cited No. 203 a.; 2 Rich. 19. As to proof of loss: see 2 Speer 17, 62, 661; 3 McC. 318; Harp. 76.
The object of recording is notice. Deed required to be recorded, good between the parties without recording. 1 Strob. 552. Good against a subsequent purchaser who had explicit notice of it. 1 McC. 265; 1 Brev. 332.
As to registering deed of personalty in the office of Secretary of State. 1 Strob. 442; 1 Bay 332.
Unrecorded mortgage and subsequent judgment. 1 Strob. 442: 2 Bay 251; 1843, 11 Stat. 256.
Marriage Settlements; 1823, 6 Stat. 213; 1832, 6 Stat. 482; 1 Speer's Eq. 236. 1785, 4 Stat. 656; 6 Stat. 636; 1792, 5 Stat. 203; 1 Rich. Eq. 214.
Other recording Acts: 1698, 2 Stat. 137; 1785, 7 Stat. 232—4; 1788, 7 Stat. 247; 1789, 5 Stat. 127.

b 1795, 5 Stat. 256.

191. *Relinquishment of Inheritance.* [a]

To be recorded. [b]

STATE OF SOUTH-CAROLINA, }
District. }

I, D. H., Clerk of the Court of Common Pleas and General Sessions, and *ex officio*, Magistrate for the district aforesaid, do hereby certify, unto all whom it may concern, that E. B., the wife of the within named A. B, did this day appear before me, and being privately and separately examined by me, did declare, that the release within written was positively and *bona fide* executed, at least seven days before this, her examination; that she did, at least seven days before this examination actually join her husband in executing the said release, and did then, and at the time of her examination still does, freely, voluntarily, and without any manner of compulsion, dread or fear, of any person or persons whomsoever, renounce, release, and forever relinquish, all her estate, interest, and inheritance, in the premises mentioned and conveyed in the said release, unto the said C. D. and his heirs and assigns.

In witness whereof, she has signed this in my presence.

Given under my hand and seal, } E. B.
day of, &c. }

[L. S.] D. H., Clerk & *Ex off.* Magistrate.

Another mode of barring a married woman of her "dower or thirds," or of her "right and inheritance," was provided by the Act of 1731, 3 Stat. 303, and is yet unrepealed. According to it, the wife should join freely and voluntarily with her husband in the conveyance, and then acknowledge the same before the Chief Justice, or before any persons by him thereunto authorized; which being certified by the Chief Justice and recorded *in the office of Pleas*, shall be effectual as any fine in the Courts of Westminster. An Act of 1767, 7 Stat. 196, extends the power of the Chief Justice in this respect, to any Assistant Judge of the Court of Common Pleas.

192. *Writ of Dedimus Potestatem, to take renunciation of dower, relinquishment of inheritance, or probate of the execution of a deed.* [c]

THE STATE OF SOUTH-CAROLINA,

To *(two or more Commissioners)* of county, in the State of
Greeting:

Know ye, that in consideration of your integrity and skill, full power is hereby given to you [any two or more of you] *

Dower.. To take the renunciation of E. B., wife of A. B. of in the State of , of her dower in the premises described in the deed [hereunto annexed, *or*, from A. B. to C. D. dated, &c. conveying a tract of land, situate, &c.]

Inheritance.—* to take the relinquishment of E. B., wife of A. B. of &c., of her estate and inheritance in the premises described, &c.

Probate— * to take probate of the execution of the [said] deed [hereunto annexed, from A. B. to C. D., dated, &c.] †

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a 1795, 5 Stat. 257.

b See 1 Strob. 553.

c 1839, 11 Stat. 77 § 23.

Dower or Inheritance.—For this purpose, you will cause the said E. B. to appear before you, and you will examine her privately and separately, apart from all other persons, and if upon such examination, she shall freely declare that she ‡

Dower—does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish to C. D. his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in and to all and singular the premises described and conveyed in the deed aforesaid.

Inheritance—‡ did at least seven days before such examination actually join her husband in executing the deed of release aforesaid; that the said release was positively and *bona fide* executed at least seven days before such her examination, and that she did then at the execution of the said release, and still does at the time of examination, freely, voluntarily, and without any manner of compulsion, dread or fear of any person, or persons whomsoever, renounce, release, and forever relinquish all her estate, interest and inheritance in the premises mentioned and conveyed in the said release, unto C. D. and his heirs and assigns.

Dower or inheritance. Then you shall take under her hand a certificate of her renunciation (relinquishment) as aforesaid, in the form of a declaration upon private examination as aforesaid, which certificate, authenticated by your hands and seals, you shall annex to this writ.

Probate † For this purpose, you shall cause one of the subscribing witnesses of the deed aforesaid, to appear before you, and having administered to him, (as you are hereby fully authorised to do,) an oath, or solemn affirmation, according to the form of his religious persuasion, that his affidavit is true, you shall take under his hand an affidavit, that he was personally present, and saw A. B. [and E. B. his wife] sign, seal and deliver the deed aforesaid, for the uses and intents therein expressed, and that he and the other subscribing witness signed their names thereto as witnesses of its due execution: which affidavit, authenticated under your hands and seals, you shall annex to this writ.

Dower, Inheritance, or Probate. And having certified under your hands and seals, the due execution of this writ, [and verified the same by the oath [a] of one of you before some Magistrate, who is authorized by the laws of your State to administer an oath, and whose official signature may be properly authenticated.] You shall carefully return this writ, together with your proceedings thereon, to the Clerk of the Court of Common Pleas and General Sessions for district, in the State first aforesaid, to be duly recorded. Herein fail not.

Witness D. H., Clerk of the Court of Common Pleas and General Sessions for district, at on, &c.

(Seal of the Court.) D. H.

Certificates to be annexed to the Writ in its execution. 193.

Renunciation or relinquishment, taken by Commissioners.

To be annexed to the writ.

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a 16th Rule of Court, for dower or inheritance.

THE STATE OF } ss.
County. }

I, E. B., the wife of A. B., upon private and separate examination before , Commissioners appointed by virtue of the annexed writ of *Dedimus Potestatem* from the State of South-Carolina, freely declare, that I, [*Renunciation of Dower, as in writ of ded. potest., or in No.* 190. *Relinquishment of Inheritance, as in writ, or No.* 191.]

Witness my name signed by my own hand. E. B.

We, , Commissioners appointed by the annexed writ of *Dedimus Potestatem* from the State of South-Carolina, under the seal of the Court for district, in the said State, do hereby certify, that E. B. the wife of A. B., of, &c., did this day appear before us, and having been by us privately and separately examined, apart from all other persons, did freely declare, as appears above under her hand, and did in our presence subscribe the foregoing declaration and renunciation (*or*, relinquishment) in manner and form therein stated.

Given under our hands and seals, at this day of, &c.

....., [L.S.]
....., [L.S.]

Probate taken by Commissioners.

THE STATE OF } ss.
County. }

I, , one of the subscribing witnesses to the annexed deed from A, B. to C. D., do solemnly swear, that I was present *(as in No.* 189.*)* (Signed by Witness.)

Sworn to and subscribed this day of A. D. 18 before us, Commissioners appointed by virtue, &c. *(as above.)*

Return of Commissioners.

To be endorsed on writ.

THE STATE OF }
County. }

The execution of the within writ to us directed, appears by the certificates hereunto appended, under our hands and seals.

....., [L. S.]
....., [L. S.]

Oath of one of the Commissioners. [a]

THE STATE OF }
County. }

I, , one of the Commissioners appointed by virtue of the annexed writ, swear, that the commission contained in the said writ was duly executed; and that the execution appears in the annexed certificates, under the hands and seals of *(two of)* the Commissioners.

Sworn to and subscribed this day, &c. before *(a Magistrate.)*

It may be prudent to add certificates authenticating the attestation of the Magistrate: the certificates of a Clerk and Judge, as No. 200, or of a Judge and Clerk, as No. 199.

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[a] 16th Rule of Court.

Clerk acting as Ordinary.

For Clerk's duties in case of a vacancy in the office of Sheriff, see 1839, 11 Stat. 79 § 39; 55 § 45. And see the same for his duties in case of a vacancy in the office of Ordinary, "whose duties he shall discharge until an Ordinary be elected and commissioned." When the Ordinary is Executor or Administrator, the Clerk becomes Ordinary as to that particular estate. 11 Stat. 79 § 38.

Bond by Executor, in case of purchase by himself of his Testator's estate. [a] 194.

Bond by C. D., (*Executor*) and one or more sufficient sureties; penalty twice the purchase money; payable to D. H., [Clerk and *ex officio* Ordinary for the said district: *or*, Clerk of the said district, and *ex officio* Ordinary as to the estate of E. F., deceased, of which C. D., Ordinary for the said District, is Executor,] his executors, administrators, successors in office and assigns.

Whereas, at a sale made on day of the estate of E. F., whose Executor the said C. D. is, the said C. D. became the purchaser of two slaves, to-wit: Tom, &c., at the aggregate price of dollars, payable, according to the terms of the sale, on day 18 .

Now the condition of this obligation is such, that if the said C. D. shall well and truly account for the purchase money of the property purchased by him as aforesaid, then this obligation shall be void, else to remain in full force.

See No. 204 (b.)

Clerk.—Ex-officio Commissioner of Locations. [b]

Warrant of Survey. 195.

STATE OF SOUTH-CAROLINA, District. } Office of the Comm'r of Locations.

D. H., Clerk of the Court of Common Pleas and General Sessions, and *ex officio*, Commissioner of Locations for the district aforesaid:

To G. R., or some other lawful Deputy Surveyor for the said district. [c]

You are hereby authorized and required, with proper attention to the instructions of the Surveyor General, to lay off and locate unto C. D., a tract of vacant land within the district aforesaid, [d] which has been entered by him, and will be shewn to you in his behalf: and to return this warrant, when executed, together with a true and correct plat of the survey you may make under it, certified by you, into this office within two calendar months from the date hereof.

Given under my hand and seal of office, at this day of, &c.

The Deputy Surveyor returns his plat as follows:

In pursuance of a warrant from D. H., &c., granted to C. D., on day of , I have laid off and located to the said C. D. a tract of land, containing acres,

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a 1839, 11 Stat. 62; 1 Strob. 36.

b 1839, 11 Stat. 81 § 49—53; Fees, 11 Stat. 10; Fee Bill, *ante* p. 119; see No. 204 (a)

c 1785, 4 Stat. 707 § 3.

d Limit to 640 acres by § 10, Act 1784, 4 Stat. 592, repealed: 1785, 4 Stat. 709.

situate, &c·, and having such shape, marks, buttings and boundings as are represented by the annexed plat.

Surveyed day G. R., Deputy Surveyor.

The Commissioner records the warrant in one book, and the return and plat in another, and, if the fees are paid, transmits the original plat to the Surveyor General's Office, within three months from its delivery to him—having first endorsed on the said plat, as follows:

Recorded day 1848, in Book A. page 120, and certified for C. D. D. H., Clerk & *Ex off.* Comm'r Locations.

196.

Elapsed land: in the Location Office. [a]

When the limited time has elapsed—six months from survey—and land located has not after return to the Commissioner, been passed through the Location Office by payment of the fees, the Commissioner may certify the survey for any person who will apply for it and pay the fees. This is done by writing on the original plat thus:

I certify for G. H., the within survey made for A. B., and now elapsed.

D. H., Clerk & *Ex off.* Comm'r of Locations.

In like manner, under Act 1785, 4 Stat. 710, after six months elapsed from the survey, and no grant obtained, any person may obtain a grant by paying the fees, if the plat be in the Surveyor General's Office; or by obtaining a copy of the plat for the Location Office, if the original plat has been passed through that office, and not transmitted to the Surveyor General. Upon the copy, the Commissioner should (after exact copy of the Surveyor's return, and of the certificate of recording,) endorse:

A true copy from my book Certified this day of for G. H., who applies for it, as a survey of elapsed land.

D. H., Clerk & *Ex off.* Comm'r of Locations.

Certificates and authentication of Records.

Exemplification of a record, or other judicial proceeding, authenticated by certificates of Clerk and Judge, under Act of Congress 1790. [b]

197. *Clerk's Certificate.*

THE STATE OF SOUTH-CAROLINA, }
District. }

I, D. H., Clerk of the Court of Common Pleas and General Sessions for district, in the State aforesaid, do hereby certify, that the writing hereunto annexed, consisting of pages, doth contain a full and true exemplification of all the proceedings had in the Court aforesaid, in a certain case wherein A. B. was plaintiff and C. D., defendant, as appears by the original records remaining in my office.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, at on the day of in the year of our Lord one thousand, &c. and in the year of the Sovereignty and Independence of the United States of America.

D. H., C. C. P. & G. S.

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a 1839, 11 Stat. 81; 1786, 4 Stat. 748.

b 1 Brev. Dig. 317.

Judge's Certificate. 198.

Which the Clerk should write, except the name and date.

THE STATE OF SOUTH-CAROLINA.

I, one of the Judges of the said State, and in turn, presiding Judge of the Court of Common Pleas and General Sessions for district, in the said State, do hereby certify, that D. H., Esq., whose attestation is above written, (as appears by his name in his own hand writing, and under his seal of office thereunto affixed,) was, at the date thereof, Clerk of the said Court for district aforesaid; that all due faith should be given to his official attestations as such Clerk: and that the said attestation is in due form, and by the proper officer.

Given under my hand at this day of A. D.

Authentication of records and copies from office books, which records and books are kept in a public office, not appertaining to a Court: as Register of Mesne Conveyances in Charleston, Surveyor General, perhaps Ordinary. [a] 199.

There should be, 1st. the attestation of the Offier who keeps the record or office book, under his seal of office, if there be any such seal; and if there be no such seal, a statement of that fact. 2d. A certificate of the Governor, the Secretary of State, or Keeper of the Great Seal, that the attestation is in due form and by the proper officer.

Instead of the last, there may be a certificate of the presiding Judge of the district in which the office is kept, followed by the certificate of the Clerk, under his hand and seal of office, that the Judge is duly commissioned and qualified. Thus:

Judge's Certificate.

THE STATE OF SOUTH-CAROLINA.

I, , one of the Law Judges of the said State, and in turn presiding Judge of the Court of Common Pleas and General Sessions for [Charleston] district, in the said State, (in which district the office of *Register of Mesne Conveyances for Charleston District* is kept,) do hereby certify, that M. K., Esq. whose attestation under his hand [and seal of office] immediately precedes this my certificate, was at the date thereof, *Register of Mesne Conveyances for Charleston District* aforesaid, [and keeper of the records, books and papers which formerly appertained to the office of *Register for the Province of South-Carolina*, which latter office has been superseded (*abolished*):] that all due faith and credit should be given to his official attestations: [that there is no seal belonging to his office:] and that the preceding attestation is in due form and by the proper officer.

Given under my hand, &c.

Clerk's Certificate.

THE STATE OF SOUTH-CAROLINA, }
District. }

I, D. H., Clerk of the Court of Common Pleas and General Sessions for district, in the State aforesaid, (in which district the office of is kept,) do hereby certify, that the Honorable , whose

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a Act of Congress 1804, 1 Brev Dig. 320

signature in his own hand-writing is subscribed to the preceding certificate, was at the date thereof one of the Law Judges of the said State, and in turn a presiding Judge of the Court aforesaid, for the district aforesaid, duly commissioned and qualified.

In testimony whereof, &c. *(as in No.* 197.*)*

200. *Authentication of a Magistrate's attestation.*

Clerk's Certificate.

THE STATE OF SOUTH-CAROLINA, }
District. }

I, D. H., Clerk of the Court of Common Pleas and General Sessions for district, in the State aforesaid, do hereby certify, that E. F., Esq., before whom the preceding affidavit was made (as appears by his name in his own hand writing attesting the same,) was at the date thereof a Magistrate for the district aforesaid, [who had been duly appointed and qualified and had signed the roll kept according to law in my office. [a]]

In testimony whereof, I have hereunto set my hand and seal of office, at, &c., *(as in No.* 197.*)*

The Judge's certificate should be like No. 193, except that the Clerk's should be called a *certificate* instead of an *attestation:* and that it may be advisable to add:

That, according to the laws of this State, a Magistrate is authorized to administer an oath, [and to take the probate of deeds,] and the roll of Magistrates for his district is kept by the Clerk of the Court of Common Pleas and General Sessions.

201. *Certificate by Clerk as to the records of a County Court.*

THE STATE OF SOUTH-CAROLINA, }
District. }

I, D. H., Clerk of the Court of Common Pleas and General Sessions for district, in the State aforesaid, and *ex officio*, keeper of the records, books and papers which appertained to the County Court of County, (which Court has been abolished, and its records and papers transferred to the District Court of which I am Clerk,) do hereby certify, that, &c., proceedings had in the said County Court, &c. as appears by the original [records] remaining in my office. *(See No.* 197.*)*

(Seal of office.)

To be sworn to, if for use in this State. See 5 Stat. 381.

202. *Certificate by Clerk as to records of a former district, of which his is now part.*

Clerk, &c., and *ex officio*, keeper of the records of the Court for the former district of , which has been divided into the districts of &c., proceedings had in the [Court of Common Pleas, *or*, General Sessions] for the district of in a certain case, &c., records remaining in my office. *(See No.* 197.*)*

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a This clause may be omitted if the certificate is intended for use in this State: but may be material elsewhere to shew the Clerk's right to certify as to the Magistrate.

Certificate by Clerk, ex officio, Register of Mesne Conveyances as to a copy from the Registry.[a] 203. (a)

—— Clerk of the Court of Common Pleas and General Sessions, and *ex officio*, Register of Mesne Conveyances for the district of in the State aforesaid, hereby certify, that, &c. contain a true copy of a certain (mortgage) from C. D. to A. B. recorded in the Register's Office aforesaid, as appears by the book in which the same was registered, remaining in my office.

In testimony, &c. *(See No.* 197.*)*

Certificate by Clerk, ex officio, Register of Mesne Conveyances, that no paper has been registered. 203. (b)

——— certify, that no mortgage from C. D. to A. B. of a tract of land called Black Hill, (situate, &c.*)* or any part thereof, has been registered in my office, [*or*, that no registry of a deed from, &c. can be found in my office.]

Certificate by Clerk, ex officio, Commissioner of Locations. (*See No.* 195.) 204.(a)

——— *ex officio*, Commissioner of Locations for the said district, certify, that the annexed plat is truly copied from Book A. page 120, in which book, belonging to the said office of Commissioner of Locations, are recorded plats returned to the said office under warrants of survey.

Certificate of Clerk, as Ordinary. (See No. 194.*)* 204. (b)

——— *ex officio*, discharging the duties of Ordinary for the said district, during a vacancy in the office of the said Ordinary, certify, that &c., [*or*, *ex officio*, Ordinary as to the estate of E. F., deceased, of which C. D., Ordinary of the district aforesaid, is administrator, certify that, &c.]

Judge's certificate as to either of the six certificates last preceding. 205.

(*As in No.* 198.) was at the date thereof, Clerk of the said Court for district, and *ex officio*, Keeper &c., Register &c., Commissioner &c., Ordinary &c., (*according to the description in the Clerk's certificate*;) that all due credit should be given to his official attestation as such Clerk and Keeper, &c., Register, &c., and that the said attestation is in due form, and by the proper officer.

Given under my hand, &c.

For certificate of conviction, see No. 84.
For formal transcript from Journal, see No. 2.
For common mode of signing a rule, see No. 35.
Certificates in Naturalization, Nos. 172, 177.
Certificates on warrant of survey, and as to elapsed land, No. 195.
Certificates to be returned with writ of dedimus potestatem, No. 193.

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a See 187—193. Concerning attested copies as evidence, see 1721, 7 Stat. 176; 1731, 3 Stat. 285, 303; 1800, 5 Stat. 381; 1803, 5 Stat. 459, Grants;—1823, 6 Stat. 209, Wills;—1843, 11 Stat. 255, Deeds. No. 189.

SHERIFF.—DEPUTIES.

206. *Deputation of a regular Deputy.*

STATE OF SOUTH-CAROLINA, }
District. }

I, J. S., Sheriff of the district aforesaid, do hereby constitute and appoint C. D. my regular Deputy, to act, do and execute what to the office of Deputy Sheriff shall belong or appertain: during our mutual pleasure.

In witness whereof, I have hereunto set my hand and seal, this day of A. D. 18

In Presence of } J. S., [L.S.]

See 8th Sec. of Sheriff's Act of 1839, 11 Stat. 28, for the distinctions between regular Deputy, special Deputy for whom the Sheriff is responsible, and bailiff or special Deputy for whom the Sheriff is not responsible to the party at whose request he was appointed: (Stone v. Chambers, 1 Strob. 117;) also, for the oaths to be endorsed on the deputation. The deputation and oaths are required to be read in open Court, and recorded in the Journal of the Court.

The appointment of a Jailor should be in writing, deposited in the Clerk's office. 41 Sec. Sheriff's Act, 1839, 11 Stat. 33.

A Deputy Sheriff is one of the various civil officers, who are, by the Act of 1816, (6 Stat. 27,) required to take an oath to enforce that Act against gaming, "before they be qualified to act in their respective offices." See that oath, No. 112.

The covenants between the Sheriff and his regular Deputy, respecting compensation indemnity, limitation of powers, &c., will be binding *inter sese*, and should be expressed in a suitable instrument. 2 Hill 647.

207. *Deputation of a special Deputy, for whom the Sheriff is responsible.* [a]

THE STATE OF SOUTH-CAROLINA, }
District. }

I, J. S., Sheriff of the district aforesaid, do hereby constitute and appoint C. D. my special Deputy,

to execute this writ,—*or*,

to levy upon and seize a certain negro named of the property of E. F., under a Fi. Fa. in the case of G. H. against the said E. F.,—*or*,

to serve all mesne process (bail writs excepted,) which may be handed to him before the next Court of Common Pleas for this district,—*or*,

to do all acts appertaining to the office of Deputy Sheriff, until the next return day for this district,—*or*,

to discharge the duties of a Deputy Sheriff within Parish, (*or*, Regiment, *or*, Beat Company,) part of my district, until K. L., my regular Deputy, shall return from New-York.

Witness my hand and seal, this day of A. D. 18

Done in presence of } J. S., [L.S.]

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a *Vide*, Harp. 23.

These instances will serve to shew how the exigency requiring the appointment, or the special limitation with which it is made, should be expressed in the deputation. If only a single writ, or other paper, is to be executed by the special deputy, the deputation should properly be written on it. [a]

Deputation of a special Deputy, appointed at the request of a party, his agent or attorney, which case is exempted from the ordinary responsibility of a Sheriff. [b] 208.

A.. B..,
v. } In the Common Pleas. District.
C.. D... } Ca. Sa. lodged in my office, day of *or*,
Bail writ in assumpsit, entered in my office day of

(This caption should be particular, if the deputation be written on a separate paper, but is unnecessary, if it be written on the writ, or other process to be executed.)

At the request of (*"party, his agent, or attorney,"*) I hereby deputize E. F., to execute this writ, at the risk of the said (*party.*)
Witness my hand and seal, this day of
Done in presence of } [L.S.]

Sheriff's Returns.—Mesne Process. 209.

In my own person, [*or*, By my regular deputy A. B., *or*, By my special Deputy C. D.] I did on the day of 18 . —*
I swear [c] to the truth of this return. J. S., Sheriff.

J. S., *or*, A. B. *or* C. D. (*he who performed the service.*)
Before Clerk, *or*, Magistrate.

Personal service of Sum. Pro. 210.

(*As in No.* 209 *to*—*) deliver to the defendant, C. D., a copy of this process.

Service of Sum. Pro. by copy left. [d] 211.

(*As in No.* 209 *to*—*) leave a copy of this process at the most notorious place of residence of the defendant.

Personal service of writ of Capias ad Respondendum. 212.

(*As in No.* 209 *to*—*) deliver to the defendant, C. D., a copy of this writ, with a proper notice [e] thereon endorsed.

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a The Sheriff is liable for the acts of one recognized as his Deputy, although there may have been no written deputation. Harp. 226. Even the refusal of a deputy to redeliver paper, or obey the Sheriff, will not exempt the Sheriff. MSS. Waldhamer v. Hard, 1827.

b 1839, 11 Stat. 28 § 8.

c As to return on oath, see 1 N. & McC. 125; 2 Bail. 492. Return by Deputy, 2 McC. 144; 315. The service is good although a writ was signed and sealed in blank, and never entered in the Sheriff's office. 1 Speer 1; see 2 Rich. 334.

d 1839, 11 Stat. 28 § 12. See No. 213.

e 1737, 7 Stat. 190 § 5.

213. *Service of writ of Cap. ad Resp. by copy left.*[a]

(*As in No.* 209 *to*—*) leave at the most notorious place of residence of the defendant a copy of this writ, with a proper notice[b] thereon endorsed.

214. *Arrest under Order for Bail on Sum. Pro. or writ, and copy delivered.*

(*As in No.* 209 *to*—*) take the within named C. D., in my district, and forthwith deliver to him a copy of the process [*or* writ with a proper notice[b] thereon endorsed.] —†

215. *Body held.*

(*As in No.* 214 *to* —†) and his body I now hold hold in custody.

216. *Bail given.*

(*As in No.* 214 *to* —†) and him I safely kept —‡ until he gave me bail according to law.

The names of the bail must be endorsed on the Mesne Process. 11 Stat. 30 § 34.

217. *Discharged upon giving Prison Bounds bond.*

(*As in No.* 216 *to* —‡) until day , when he entered into a Prison Bounds bond, with O. & P. his sureties. (*See No.* 328 *for bond.*)

218. *Discharged under Prison Bounds Acts without bond, or Insolvent Debtors Acts.*

(*As in No.* 216 *to* —‡) until day of , when he was lawfully discharged under the Prison Bounds Acts: (*See No.* 145:) *or* Insolvent Debtors Acts. (*See No.* 139.)

219. *Death in Prison.*

(*As in No.* 216 *to* —‡) until he died in prison on day of

220. *Discharged on supersedeas.*

(*As in No.* 216 *to*—‡) until afterwards, to-wit, on day of by virtue of a writ, [*or* order] to this return annexed, I caused the said to be delivered out of custody, wherefore, I have not his body as within required.

221. *Discharged by order of the Plaintiff.*

(*As in No.* 216 *to* —‡) until afterwards, to-wit, on day of , by the (written) order of the plaintiff, (hereunto annexed,) I discharged him from custody.

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a 1839, 11 Stat. 28; 1737, 7 Stat. 190; 1720. 3 Stat. 118. Service good in the temporary absence of the defendant. 2 McMul. 352; 3 McC. 85; 1 McC. 566; see No. 236.

b 1737, 7 Stat. 190 § 5.

Discharge upon deposit of money. 222.

(*As in No.* 216 *to* —‡) until the said C. D. deposited with me a sum of money sufficient to cover the (debt) damages, costs and charges which the plaintiff may in this action recover against him.

This would probably be held a voluntary escape, as we have no Statute authorizing the receipt of money as bail: but the money would indemnify the Sheriff.

Two or more Defendants. 223.

When there are two or more defendants, if the same Sheriff or Deputy has served more than one, he can unite in one return the particulars as to those he has served: but it is better that there should be a separate return and oath as to any one or more defendants who have been served by a different officer.

The service of one or more, and any of the following excuses, tarde, languidus, rescue, injunction, &c. (*Nos.* 225—233,) as to one or more who have not been served, may also be united in one return.

Where two or more defendants reside in different districts, (7 Stat. 293 § 3,) the Sheriff may serve a copy without having the original writ. Wallace v. Prince, 3 Rich. 177.

Service of Mesne Process upon one of several partners, under Act of 1792.[a] 224.

In person (*or*, By, &c. *see No.* 209,) on the day of I delivered, &c. (*or* left, &c.) the within named C. D., one of the partners of the within named firm of D., F. & H.: the within named E. F., and the within named G. H., are not to be found within my district; nor is either of the said last mentioned persons, or any other partner of the firm aforesaid known to me to be within, or to reside in, this State.

In cases of joint contract under the Act of 1823, 6 Stat. 212, only the contractors within the State should be sued: the plaintiff stating in his declaration and proving on the trial the residence of the others abroad.

Non est inventus. 225.

(For a Ca. Sa., bail writ, or any order requiring arrest, omit the latter clause.)

The within named is not to be found within my district, [nor has he therein any place of residence.]

Tarde: for process mesne or final. 226.

This writ (*or*, process) came to my hands so late, that it could not be served (*or*, executed.)

Languidus: for bail process or Ca. Sa. 227.

In person [*or*, By, &c. *see No.* 209,] on day of I proceeded to , where the within named was, in order to arrest him: and then and there found the said so sick, weak and infirm, that, without danger to his life, he could not be removed: and in the same condition, he hath ever since been, and still remains, so that I cannot have his body as required.

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a 7 Stat. 281.

228. *Languidus and non est inventus.*

By virtue of this writ, I, in person [*or*, By, &c. *see No.* 209,] did on the day of last, at a certain dwelling house of one R. T. in my district, take the body of the within named C. D.: she, the said C. D., having been, on the day of aforesaid, brought to bed of a child, and then being so very ill, weak and diseased therewith, that I could not remove her from the room in which she was lying, without the greatest peril of her life: Wherefore, I, from necessity of the above circumstances, and for fear of occasioning her death in case I continued her in my custody, immediately relinquished the custody of the body of her the said C. D., and afterwards, and so soon as it might be supposed she was so far recovered of her illness, weakness, and disease, as to be able to be removed without danger to her life, to-wit, on the day of last, I went again in person, [*or*, By, &c.] to the said house and room for the purpose of taking her into my custody, in execution of this writ, and she was not there, or ever after found there or in my district: for which reason, I cannot have the body of the said C. D. as within required.

229. *Rescue* [a] *and non est inventus.*

In person [*or*, By, &c. *see No.* 209,] on the day of A. D. within my district, I took and arrested the within named C. D., and him safely kept, until J. K. of and divers other persons to me [*or*, my Deputy aforesaid,] unknown, on the day of aforesaid, at aforesaid, with force and arms assaulted and ill-treated me [*or*, my Deputy aforesaid,] and the said C. D. out of the custody of me [*or*, my Deputy aforesaid,] then and there rescued: and the said C. D., then and there with force and arms rescued himself, and escaped out of the custody of me [*or*, my Deputy aforesaid,] against the peace and dignity of the State: and afterwards, the said C. D. is not to be found in my district.

230. *Injunction:* [b] *stayed process—mesne or final.*

I was ready to do as within commanded: but, on the day of , received a copy of an injunction [*or*, notice of an injunction,] ordered by the Court of Equity for district, in the case of complainant, against defendants, whereby I was enjoined from further proceeding in this matter: and therefore, I have not proceeded.

231. *Privilege of a member of the Legislature.*

For mesne process, or Ca. Sa. *Vide* 4 McC. 152; 1 Hill 396.

The within named is a member of the Senate [*or*, House of Representatives] of the General Assembly of this State, and served in the General Assembly which met at Columbia on — *: so that, at the time of the delivery of this writ [*or*, process] to me, and from thence continually, he hath been under the Constitution of this State protected in his person and estate, and therefore, I could not execute this writ [*or*, serve this process] against him.

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a Rescue, good on mesne process. Cro. Eliz. 781. Bad on execution, if Sheriff is bound to raise the *posse comitatus* on execution. 1 Strange 432; 11 Stat. 36 § 52.

b Harp. 490.

Privilege of a member and N. E. I. 232.

(*As in No.* 231 *to* —*) so that, from the time he came into my district, after the delivery of this writ to me, until he left my district, to-wit, on he hath been under the Constitution, &c. (*as in No.* 231 *down to* 'him,' *then say,)* and after the said last mentioned day he hath not been found within my district.

Privilege of suitor or witness in Court.[a] 233.

For bail process or Ca. Sa.

The within named , at the time of the delivery of this writ, [*or*, process,] to me was, and from thence continually hath been, a suitor [*or*, witness] in a certain cause which was depending in the Court of C. P. for this district, between A. B., Pl'ff, and C. D., Def't, and as such suitor [*or*, witness] was going to, attending on, or returning from the said Court, so that I could not arrest him as required.

The Sheriff is not bound to notice this privilege, but the arrest, if made, will be set aside by the Court. Doug. 672; 2 Black. Rep. 1035 & 1190: 3 Wilson 341; 1 Rich. 197.

Addition of personal service. 234.

This, if authorized, may be made on mesne process.[b]

on by, &c. I delivered to him the said a copy of this process [*or*, writ, with a proper notice endorsed.]

Privilege of a suitor or witness and N. E. I. 235.

The within named at all times when he was in my district, after the delivery of this writ to me, was, as a suitor [*or*, witness] in a certain cause, &c. either attending the said Court, or going to it, or returning from it, so that I could not arrest him as required. And before and afterwards, to-wit: before the day of he hath not been found within my district. (*Add service without arrest, if made and authorized.*)

For the privilege of those engaged in the MILITIA SERVICE, going and returning, *vide* 11 Stat. 210 § 161. The former Act, 8 Stat. 489 § 16, expounded in 1 Bail. 646, is altered, so that now, although there can be no arrest, there may be service upon a militiaman at muster by copy delivered or copy left. See Act 1839, 11 Stat. 28 § 12.

For the privileges of suitors and witnesses attending the Court of Equity, or the Court of the Master or Commissioner in Equity, *vide* Vincent v. Watson, 1 Rich. 197. Either the Court whose proceedings have been interrupted by the arrest of a witness, or the Court under whose process the arrest has been made, may interfere to effect a discharge. It is the personal privilege of the witness which the Sheriff is not bound to notice.

Subpœna Writ. 236.

Service of Subpœna writ on one witness.

In my own person, [*or*, By, &c. *see No.* 209,] on the , I exhibited this writ and delivered a subpœna ticket conformable thereto to the within named C. D.

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a 7 Stat. 265 § 15.

b 1839, 11 Stat. 28; Harp. 452.

Non est inventus as to another.

The within named E. F. is not to be found within my district.

Query.—As to service by copy left?

The Act of 1737, 7 Stat. 190 § 5, contemplates only mesne process by which suit is commenced. The Sheriff's Act of 1839, 11 Stat. 27, 28 § 6, Writ Book, and § 12, uses terms, which do not distinguish between the process that may be served by copy left, and that which may not be.

Richardson v. Whitefield, 1 McC. 403, refers to a decision, that a writ of attachment is not included in the Act which authorizes service by copy left. Goday v. Corlies & Commander, 2 Strob. holds service of interrogatories by copy left, to be insufficient, without proof of actual notice.

So. St. Packet Company v. Roger, Cheves Eq. R. 48, recognizes the service of a *subpœna ad respondendum* by copy left, as sufficient under the 2d Rule of the Court of Equity.

Scire Facias.

237. *Return of Nihil.* [a]

The within named C. D. hath nothing within my district by which I can cause him to be summoned: neither is he to be found in the same.

238. *Service of Scire Facias by delivery.* [b]

In my person [*or*, By, &c., *see No.* 209,] I delivered a copy of this writ to the within named C. D.

239. *Service by copy posted, of Rule or Scire Facias to revive proceedings.* [c]

The within named E. F. has, since the delivery of this writ to me, been continually absent from and without the limits of this State: and on I, in my own person [*or*, By, &c.] posted a copy of this writ upon the door of the Court-house of this my district, wherein the said E. F. had his last residence within this State.

Service of Mesne Process on Corporation.

240. *Delivery to President.* [d]

In person [*or*, By, &c., *see No.* 209,] I delivered a copy of this process [*or*, writ with a proper notice thereon endorsed,] to K. L., President of the , the corporate body within named.

241. *Copy delivered to Clerk at place of business.* [e]

In person [*or*, By, &c. *see No.* 209,] I, at the , the principal place of business of the within named corporate body, delivered a copy of this summary process [*or*, writ with a proper notice endorsed thereon,] to M. N. the Cashier [*or*, Clerk] of the said corporate body.

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a Ingraham v. Belk, 2 Strob. and cases cited.

b See 1799, 7 Stat. 297 § 23.

c 1792, 7 Stat. 280 § 6.

d 1 Strob. 72.

e Meriwether v. Bank of Hamburg, Dud. 36; Cromwell v. Insurance Company, 2 Rich. 512.

Returns. Fieri Facias.

NOTE.—A Fi. Fa. creates a lien throughout the State. 3 McC. 241; Rice 150. The Sheriff cannot convey to a purchaser a good title, under an execution which has been in fact paid, although it remains unsatisfied on its face: but the Sheriff will not be a trespasser for acting under it. 1 Rich. 13; see 1 Speer 403; 2 McMul. 335. As to Fi. Fa. under injunction, see 1 Rich. 145; 1 Hill 69; Harp. 457. Concerning the renewal of a Fi. Fa., see Act of 1827, 6 Stat. 324; 12th Rule of Court, and cases there cited. The death of the defendant, within the time limited for renewal, does not prevent the renewal. 1 Speer 346. A Fi. Fa. may be renewed by a Ca. Sa., or a Ca. Sa. by a Fi. Fa. Robertson v. Shannon, 2 Strob. 242.

The returns required by the Act of 1827, to be made at every term, are dispensed with. 1847, 11 Stat. 433.

See Notes to Nos. 247, 251, 257, 262, 274, 290.

Nulla Bona.

The within named C. D. hath not any goods or chattels, lands, tenements, or hereditaments within my district, whereof I can levy as within commanded.

Nulla bona to Fi. Fa. de bonis testatoris, si non de bonis propriis. 243.

The within named C. D. hath not within my district, any goods, chattels, lands, tenements or hereditaments, which were of the said E. F., whereof I can levy as within commanded: nor hath he, the said C. D., any of his own proper goods or chattels, lands, tenements, hereditaments, whereof I can levy the costs, or any part thereof, as within commanded.

Payment by defendant in full. 244.

The within named C. D., hath paid to me the full amount of the (debt) damages, costs and charges within mentioned.

Payment by defendant, specially applicable to this case: there being older liens. [a] 245.

The within named C. D., on day of , paid to me a sum of money sufficient to cover the full amount of the (debt) damages, costs and charges within mentioned, (to-wit, the sum of dollars,) which according to his special directions (in writing hereto annexed) I have applied to the satisfaction of this case in preference to older liens.

In like manner payment of part and *nulla bona* as to balance; or *nulla bona* as to goods of testator, and payment of costs by executor. 246.

Levy upon lands, goods, &c. [b] 247.

NOTE.—What a sufficient levy, Dud. 19.

Money in Sheriff's hands is subject to levy, not to lien; may be applied by the Sheriff to execution against the plaintiff for whom it was collected, but is not applied by the

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a Adams v. Crimager, 1 McMul. 309.

If payment be made by one, who desires as assignee to keep the execution open for his benefit, the transaction must be regarded as a purchase of the execution from the plaintiff, and the Sheriff be regarded as the plaintiff's agent, who receives the price, and not as the officer of the law, who receives satisfaction of the execution: Care must be taken, lest by receipts given, the transaction may be rendered uncertain, and the purchaser's rights be made doubtful. See Carme v. Richardson, 3 McC. 528; Bank v. Mosely, 1 Strob. 413; 1 Hill 309; 2 Speer 110.

b See 1839, 11 Stat. 27, Sale Book; 35 § 47: 1 Bay 319.

law, and if assigned before application, the assignee will take it. 2 Rich. 4, 102, 328; 1 Bail. 40; 1 McMul. 310; 2 N. & McC. 341.

As to the Sheriff's right to the proceeds of a sale made by a Constable, see Alexander v. Collins, 3 Rich. 62, and cases cited.

An undivided residuary interest in remainder in personal property, is not subject to levy and sale: nor any interest in such property which cannot be taken into possession by the Sheriff, and delivered to the purchaser. Dargan & Bradford v. Richardson, Dud. 62. Nor under an execution against an overseer, who is to receive part of a crop, before it be severed and delivered. Rogers v. Collin, 2 Bail. 531 Nor any merely equitable interest, as land held under a bond for titles; negroes in the possession of a *cestui que trust*, when the whole legal title is in the trustee; although, what is here improperly called, the equity of redemption in mortgaged lands, may be sold under execution against the mortgagor, subject to the mortgage, it being a legal estate. 4 Mc C. 336; see 1791, 5 Stat. 169: 1797, 5 Stat. 311. Nor the articles exempted by the Act of 1823, 6 Stat. 214, or by the militia law of 1841, 11 Stat. 219; see 3 McC. 352; 3 Rich. 180. Nor goods in the custody of the law, as those actually distrained: even those replevied are liable to the *retorno habendo* in preference over other Fi. Fas., 1 McMul. 195; see Nos. 231, 290; but several Fi. Fas. or a Fi. Fa. and an attachment, may successively be levied upon the same goods, and will have priority according to dates. 1 McMul. 94.

See No. 242, and references there made.

House & Lot.

By virtue of this writ, I levied upon property of the within named C. D., to-wit, in my own person, on , I levied upon a house and lot No. 6, Bond-street, [a] in the town of Z., then occupied by O. P.

Description. [a]

By my regular Deputy, M. N., on I levied upon a tract of land in this district, on both sides of the public road from bridge to church, whereon the said C. D. then lived, supposed to contain acres: [b]

248. Equity of Redemption. [b]

By my regular Deputy R. T., on , I levied upon the equity of redemption, or other interest of the said C. D., in another tract of land, supposed to contain acres, then unoccupied, whereon O. K. once lived, and which is said to have been mortgaged by the said C. D. to L. P., before the entry of judgment in this case.

249. Land convey'd to defendant by H. L.

And also upon another tract, adjoining or near to the one last mentioned, supposed to contain acres, which was conveyed to the said C. D. by H. L., bounded on one part by creek:

250. Undivided share.

Also, upon the undivided share of the said C. D., in a tract of land, supposed to contain acres, whereon his father, T. D., formerly lived.

251. Int. in remainder in land. [c]

Also, the interest in remainder, which the said C. D. is entitled to, in a tract of land on, or near river, whereon his mother N. D. then lived.

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a The description of the property in the levy, should be so particular, that it may thereby be identified. Land, especially, should be described by the names of the occupants, and other circumstances, so that the description being applied by proof, no doubt of the thing described may remain. This is essential to the purchaser's title. It is all important, however, that no particular mentioned in the description, should be incorrect: better that it should be vague than inaccurate. See Harp. 306; 1 Hill 304; 2 Rich. 488, 543; 1 Bay 320; 3 Rich. 4; 2 Speer 62.

b 1 McC. 399; 4 McC. 336.

c Harrison v. Maxwell, 2 N. & McC. 347.

By my special Deputy L. P., I levied upon five slaves, to-wit: a negro man named Tom, a mulatto woman named Harriett and her three children, names unknown: 252. 253. Slaves. Children.

Also, upon a black horse, and on , upon the various articles mentioned in a schedule hereto annexed. 254. Horse and articles in schedule.

And on , upon the various articles mentioned in a schedule which is annexed to a Fi. Fa. in the case of E. F. against the said C. D., which was lodged in my office. 255. Schedule annexed to another ex'cution.

J. S., Sheriff, C. D.

Sale and application of the proceeds. [b]

The sales should be all carefully entered in the book of sales. See § 6 Sheriff's Act of 1839, 11 Stat. 27; Christie v. Simpson, 1 Rich. 409; Elfe v. Gadsden, 2 Rich. 373; 2 N. & McC. 563.

Of lands and negroes, especially lands, it would be serviceable to purchasers if a summary statement of sales was made on the Fi. Fa., thus:

I sold of the foregoing levy, to-wit: a negro named Tom, to M. R., for four hundred dollars: woman and children (A. E. & B.) to J. T., for twelve hundred dollars. The house and lot to P. T. for one thousand dollars: titles delivered to him. The tract on the public road, where C. D. lived, called Manton, to G. H., for two hundred dollars: titles delivered (by written order of the said G. H.,) to K. R. The other articles to various purchasers. *Vide*, Sale Book ——. 256. 257. Sale. Titles to another.

Of the proceeds of sale, I have applied a sufficient sum to satisfy this Fi. Fa. 258. Application of money to this Fi. Fa.

J. S., Sheriff C. D.

Of the proceeds of sale, after satisfaction [from the sales of the lands, of a judgment recovered in district by E. F., against the said C. D., having a lien older than the lien of this Fi. Fa., and] of various writs of Fi. Fa. against the said C. D., having lien prior to this, I have applied a residue of dollars towards the satisfaction of this Fi. Fa. 259. 261. Older judgments. [c] Older executions. [d] Residue to this Fi. Fa.

J. S., Sheriff C. D.

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a 11 Stat. 35 § 47.

b As to the right of third persons to take advantage of irregularities, see 1 N. & McC. 11, 403.

As to the right of the parties; see 2 Bail. 211.

As to resale upon purchaser's refusing to comply with the terms; see Elfe v. Gadsden, 1 Strob. 225; Young, Sh'ff v. Cathcart, 2 Strob. —; 2 Rich. 464; 2 Bail. 291.

As to credit by consent; see Kilgore v. Peden & Johnson, 1 Strob. 18.

Although, in general, an official act will be referred to any valid subsisting authority, (2 Bail. 361.) a sale which was made under a senior Fi. Fa., that has been since set aside, will not be supported by junior Fi. Fas., in which they were orders to wait: the orders to wait, will be considered to embrace the costs, if the contrary be not expressed. Mouchet v. Brown, 3 Rich. 117; see 2 Speer 90.

c Sheriff's Act 1839, 11 Stat. 33 § 60; Davis v. Hunt, 2 Bail. 412.

d 3 Rich. 1.

262. *Disposition of levy and further levy.*

A presumption of satisfaction arises from a levy, until the disposition of it be shewn. The Sheriff should be very careful to shew, that a levy, which has not produced satisfaction, has been disposed of, lest the plaintiff should be injured, or the Sheriff be made liable.

Sale. Levy discharged: land not deft's. Of the property levied, I sold the various tracts of land above mentioned, *(vide,* Sale Book,*)* except the tract which is stated above to have been conveyed by C. D. to H. L., and in that, C. D. having been found to have no legal interest, the levy as to it was discharged.

263. Levy discharged by plff's directions. (?) [a] And except, also, the interest in remainder above mentioned, as to which, by directions of the plaintiff in this case, (in writing and hereto annexed) the levy was discharged:

Older judgments. [b] And after satisfaction of a judgment, recovered against the said C. D., in district, by V. B.:

Older executions [c] of an execution recovered in district, by V. D., and of other executions having lien prior to this, there remained a balance of five hundred and fifty dollars, (which I applied to this case,)

264. Rateable division. which being rateably divided, between this case and others of equal lien, the sum of one hundred and twenty-two dollars and twelve cents was applicable to this,—

265. Costs retained. Bal. applied. [d] from which, the costs having been retained, seventy-one dollars and four cents remained, which I applied towards the damages [*or,* debt and damages] within mentioned:

266. Destruction: negro died. The negro man, Tom, after the levy and before he could be sold, to-wit: on day of , died of disease:

267. Negroes found to be mortg'd: redelivered to defendant. the woman Harriett, and her two younger children, E. & B., were found to be included in a mortgage, older than the lien of this Fi. Fa., from the said C. D. to M. R., and being released from the levy, were redelivered to the said C. D. on

268. Destruction: negro drown'd the elder child of Harriett, named Ann, was, after the levy, and before she could be sold, to-wit; on the day of , unavoidably drowned from the accidental upsetting of a boat during a sudden squall, whilst R. T., my Deputy, was bringing her to the jail:

269. 270. Remains for want of bid'rs. the black horse was on , offered for sale and remained in my hand for want of bidders:

Articles sold under another Fi. Fa. the articles mentioned in the schedule annexed to the Fi. Fa. of E. F. v. C. D., had, on , been sold under that Fi. Fa., and applied to it, by reason of its prior lien:

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a 2 McMul. 350.

b See No. 259.

c See No. 260.

d See No. 261.

Of the articles, mentioned in the schedule hereto annexed, a yoke of oxen having been found included in a mortgage, from the said C. D. to W. T., older than the lien of this Fi. Fa., but junior to another Fi. Fa. against the said C. D. at the suit of O. H., in my office, were released from the levy in this case and transfered to that last mentioned case:

Mortgage older than this Fi. Fa. Prop'rty transferred to another Fi. Fa. older than mortgage.

A sideboard and a dozen chairs having been found not to be the property of the said C. D., but to belong to one R. G., were on delivered to the order of the said R. G.:

271. 272. Articles not deft's delivr'd to owner.

A cow and two beds were exempt from levy and sale by law:

Exempt from sale. [a]

And the other articles mentioned in the said last mentioned schedule hereto annexed, having been left in the possession of the said C. D., under his promise to produce them on the day of sale, were not produced. Afterwards, on day of , I regained possession of one clock and four hogs, parcel of the articles in the last mentioned schedule, which with the house, being wholly insufficient to satisfy the executions in my hands againt the said C. D.,

273. Articles left with the def't not prod'cd. [b] Levy insufficient.

On by , I made a further levy of the property of the said C. D., to-wit, &c.

274. Further levy.

The within named C. D., hath not any other goods, &c.
(As in No. 242.)

Nulla bona for balance. [c]

Plaintiff's orders to wait. 275.

By directions of the plaintiff, (in writing hereon endorsed,) I have stayed the execution of this writ.

See Note to No. 256. This return and the next are applicable to Ca. Sa., or any other final process—indeed, to every process.

Stay by order of Court or Judge. [d] 276.

By order of the Court, [*or*, of the Honorable , made at Chambers,] (hereto annexed,) I have stayed the execution of this writ.

When the orders to stay specify the time of delay, after its expiration, if the active energy of the writ remain, proceedings should, without further directions, be had as upon the lodgment of a writ: but if no time be specified, when proceedings may be desired, the countermand of the former directions should properly be in writing and endorsed on the writ.

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a See No. 247.

b This would remove the presumption of satisfaction, and authorize a further levy, but would not exempt the Sheriff from liability to the plaintiff.

c A Fi. Fa. and a Ca. Sa. may be lodged at the same time, and proceedings be had on both successively, but not at the same time. Before return of Fi. Fa., after partial satisfaction from it, the Ca. Sa. may be executed: but not whilst a levy remains undisposed of. Mazyck v. Coil, 2 Bail. 101; Miller v. Bagwell, 3 McC. 429.

The lien of a Fi. Fa. is lost or suspended by an arrest under the Ca. Sa. 3 McC. 62; 4 McC. 519; 2 Hill 502. Revived by discharge of debtor with his consent: 2 Bail. 9; or by the debtor's escape, 1 Hill 310. See 1 Strob. 22: or by death in prison, 3 Rich. 235. If the plaintiff sues the surety on the Prison Bounds bond, he cannot afterwards resort to either his Fi. Fa. or Ca. Sa. 1 Rich. 76.

d 1818, 7 Stat. 321; 53d Rule of Court.

The subsequent Return should begin :—

277. The time of delay having expired, [*or*, The orders to wait having been countermanded,] I, on &c.

278. *Application of money received to Fi. Fa.*

From money which I received from the defendant, [*or*. From money which came to my hands, from sales made in the case of A. B. v. C. D.,] I applied to this case &c.

279. *Preceding Sheriff.* [a]

If personal property has been levied, and not sold by a Sheriff, he should turn it over to his successor. If by reason of death, destruction, failure of the defendant to produce it, or other cause, it cannot be turned over, the retiring Sheriff should, by a suitable return, shew the disposition of the levy.

A neglect of this may sometimes be supplied by the successor, thus :—

On , I sold &c.: the other articles mentioned in the said levy were not turned over to me by my predecessor in office, and I know were not sold by him : the negro Tom having on or about died in the possession of : the mule having been left in the possession of C. D., and not produced afterwards for sale : the carriage having been delivered to E. F., who claimed it as his property : the clock having been, by order of the plaintiff (in writing and hereto annexed,) redelivered to the said C. D.

280. Afterwards I made a further levy, &c.

Further levy & nulla bona,

The said C. D. hath no other goods, &c.

(Stay or other return, according to circumstances.)

281. *Payment to Landlord,* [b] *Tax-collector, &c.*

(Levy and Sale, ut supra.)

Of the proceeds of the sale of the goods aforesaid [*or*, of the goods mentioned in Schedule A. hereto annexed,] to-wit: the sum of dollars, I have paid to G. M., the landlord of the premises, whereon the said goods were seized, for rent not exceeding one year, which became due to him for the said premises on day of last, the sum of ——* (which sum after deduction of

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a 11 Stat. 27 § 7.

b 1839, 11 Stat. 36, "Notice of claim before the sale of such goods." 8th Ann, c. 14 2 Stat. 547, notice before removal of the goods from the premises. 3 McC. 378 (before 1839,) notice before the whole of the goods are removed.

Sheriff entitled to costs of proceeding before notice, even if enough to pay the rent be not produced. Rent must be due at the time of the levy. 1 Tr. C. R. 121: S. P. Aiken v. Heery, MSS. Decis. Nov. 1826 ; 2 Hill 434.

The right of the landlord does not exist as to chattels real, 3 McC. 38. Nor as to any goods not liable to distress. For what are not so liable, see 3 Black. Com. 8 ; 3 Stat. 295. Slave; 1794, 7 Stat. 435. 1823, 6 Stat. 214; 4 McC. 378; 1 Bay 102, 170, 301, overruled; 2 McC. 39, 329; 3 McC. 38; 4 McC 552; 1 Bail. 494. Chattel bound by trover bond. 1 McMul. 252. Any article in *custodia legis*. See Notes to Nos. 290 and 247.

The landlord's right seems to extend to goods seized under an attachment. 2 Speer 370.

the expenses of my proceedings, had before notice of the said rent, was not sufficient to discharge the rent due as aforesaid:)

(*As in No.* 281 *to*—*) further part thereof, I have paid to R. T., Tax-collector for the district of for the taxes, which, within one year before my sale, N. M former owner of the said goods [*or* lands,] became liable to pay on the said goods [*or* lands.] *a* 282.

(*As in No.* 281 *to*—*) further part thereof, [*or*, the residue thereof,] to-wit: the sum of I have applied towards the satisfaction of this Fi. Fa. The said C. D. hath no other goods, or chattels, lands, tenements or hereditaments within my district, whereon I can levy the residue of the said (debt and) damages, costs and charges as within commanded. 283.

J. S., Sheriff C. D.

As to funeral expenses and other debts of a deceased defendant, entitled to precedence over executions. See § 26 Act of 1789, 5 Stat. 111; Salvo & Wade v. Smith, 2 Speer 518.

Returns of Ca. Sa.

Note.—See No. 242 and references there made. 284.

As to the return of Ca. Sa., to fix bail, see Ancrum v. Sloan, 1 Rich. 421, overruling Sanders v. Hughes, 2 Bail. 514; Also, 3 Rich. 145.

As to arrest under Ca. Sa. from another district, 11 Stat. 29.

As to escape, 11 Stat. 31. As to rescue, No. 229.

An arrest is *prima facie* satisfaction, but escape, discharge by the Sheriff, or death in prison, removes the presumption. 1 Strob. 22; 1 Rich. 76: and, in the two former cases, the Sheriff may thereby be made liable. See Note to No. 274.

Non est inventus.

The within named C. D., is not to be found within my district.

Cepi Corpus. 285.

In my own person [*or*, By &c., *see No.* 209,] on day of , I took the body of the within named C. D., ——*

Now in custody.

(*As above to* —*) and now hold it in custody.

(*As above to* —*) and safely kept it until—†

Satisfaction.

(*As above to*—†) he paid to me the (debt) damages, costs and charges within mentioned.

Receipt of money, specially applicable to this case. *b* 286.

(*As in No.* 285 *to*—†) he paid to me a sum of money sufficient to cover the (debt) damages, costs and charges within mentioned, which, according

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a See Act of 1843, 11 Stat. 248 § 15.

b 1 McMul. 309.

to his special directions, (in writing hereto annexed,) I have applied to the satisfaction of this case.

Either of the two last returns may, after a statement of the day and name, begin at "paid," when the money has been paid without arrest. If the whole sum be not paid, the amount paid must be particularly set down.

287. *Prison Bounds Bond.* [a]

(As in No. 285 *to* —† *and then continue as in No.* 217.*)*

Discharge under Prison Bounds Acts, or Insolvent Debtors Acts, without bond.

(As in No. 218.*)*

Supersedeas.

(As in No. 220.*)*

Death in Prison. [b]

(As in No. 219.*)*

288. *Discharge by order of the plaintiff, with consent of the defendant.* [c]

(As in No. 285 *to* —†) afterwards, to-wit, on day , the plaintiff, with the consent of the said C. D., (in writing hereto annexed,) directed me to discharge the said C. D., and I did discharge him accordingly. —‡

289. *Subsequent arrest by order of the Plaintiff.*

(As in No. 288 *to* —‡) And afterwards, to-wit, on day , by the special directions of the said A. B., *(the plaintiff,)* (the evidence of which in writing is hereto annexed,) I again took the body of the said C. D., and [now hold it in custody, *or*, safely kept it until *(satisfaction, money paid specially applicable to this case, prison bounds, &c., ut supra.)*]

Other returns may be made of Ca. Sa. as of bail writ:
Tarde. No. 226.
Languidus. No. 227—229.
Privilege. Nos. 231—235.
Injunction. No. 230.
Orders to stay, as upon Fi. Fa, Nos. 275—278.

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a See No. 329.

b 1 Brev. R. 185; 3 Rich. 235.

c 1815, 6 Stat. 1.

Foreign Attachment.

Note. —See Nos. 116—127 : 345—349: 290—311.

A fund in Court, or goods in custody of the law, are not liable to attachment: as money in the hands of the U. S. Marshal. Burrell v. Letson, 1 Strob. 239. Money collected by a Sheriff under a Fi. Fa., Blair v. Cantey, 2 Speer 34. A distributive share in the Court of Equity or Ordinary, for distribution or partition, whether in the bond of a purchaser or other form. Young v. Young, 2 Hill 425: 3 Hill 12. Goods under distress. 2 Speer 367. A chattel bound by a trover bond, 1 McMul. 252. 290.

Goods levied on by a Sheriff under a Fi. Fa. may however be levied on by attachment, and successive liens be established. 1 McMnl. 94.

The words of the Act of 1823, 6 Stat. 214, seem to include attachment as well as Fi. Fa., in exempting articles from levy and sale: the words of the Militia Act of 1841, are less comprehensive. The landlord's rights under Stat. 8 Ann c. 14, seem to extend to attachment as well as Fi. Fa. 2 Speer 368: see No. 281.

For the mode of attaching partnership effects, see 2 Hill 595: 2 McC. 473.

Neither Goods nor Garnishee found.

I have made diligent search for property of the absent debtor C. D., and for the garnishees E. F. and G. H., for whom copies of this writ were delivered to me, but can find neither within my district.

Lands and goods attached: no person in possession: [a] *and N. E. I. as to Garnishees.* 291.

Notice to be fixed on door of Court-house. See No. 292.

By virtue of this writ, in my own person, [*or*, by Deputy,] at [b] o'clock, A. M., on day of , I attached and took of the property of the within named C. D., the absent debtor, one tract of land, [c] supposed to contain one hundred acres, whereon the said C. D. lately resided, bounded by river, and lands of R. T., and others, with the houses and fixtures thereon: also, the unexpired term of the said C. D., in a house and lot lately occupied by W., in the town of , which was demised by O. to the said C. D.: also, a negro man, named Tom, and a negro woman, Dinah, and her children Amy and Toney: also, a black horse, two mules, a wagon, and two beds: and no person having the things attached in possession, I fixed up at the door of the Court-house, in my district, an account of the things attached and a copy of this writ, with notice for any person or persons claiming the same, to appear as within required, and shew cause according to law: after diligent search, I could not find within my district, either of the garnishees, E. F. and G. H., for whom copies of this writ were delivered to me.

Notice on Court-house door. [d] . 292.

[Copy of the writ of attachment, with the usual notice endorsed, and copy of the Return.]

Notice.—Any person or persons, who may claim the things attached as above, or any of them, are required to appear and shew cause, according to law, at the time and place mentioned in this copy writ.

day of &c. J. S., Sheriff — D.

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a 1839, 11 Stat. 30 § 18.
b See 2 Brev. R. 466: 2 Bay 8, 272.
c See Note to No. 247.
d 1839, 11 Stat. 30 § 18.

293. *Goods, &c., attached in the hands of Garnishee:* [a] *and copy delivered to Garnishee.*

By virtue of this writ, in my own person, [*or*, by Deputy,] at 10 o'clock, A. M., on day of , I [attached of the property of the within named C. D., the absent debtor, in the hands, possession, custody, power or control of E. F., the things mentioned in the schedule A. [b] hereunto annexed, and at the same time,] delivered to [the said] E. F., garnishee, a copy [c] of this writ, with a notice thereon endorsed, pursuant to the Act of the General Assembly in such case made and provided. —*

If no goods be attached, omit matter in brackets.

294. *Things attached claimed by Garnishee on oath, as Creditor in possession.*

(*As in No.* 293 *to* —*) And the said E. F., having on oath, claimed the things attached as creditor in possession, the same was left in his possession.

What kind of a liability or claim will authorize a garnishee to hold against an attachment. See 1 McMul. 431.

Only such property as in fact, or in law, is in the hands of a garnishee, can be attached in his hands. 1 Strob. 239: not unliquidated damages which he claims in a suit: but any bond, note, or other evidence of debt, which may be delivered, can be attached even after suit brought on it. 2 Speer 330. See No. 290.

295. *Things attached taken into possession for want of claim on oath, or of bond:* [d] *held by Sheriff.*

(*As in No.* 293 *to* —*) And the said E. F. not having claimed, on oath, as a creditor in possession, the things attached as aforesaid, and having refused, upon demand made of him, to enter into bond, as by law required in such case, I caused him to surrender and give up the said things and took them into my possession, and —† now hold them.

296. *Held until attachment dissolved.*

(*As in No.* 295 *to*—†) held them until afterwards, on day , I delivered them to [[the said C. D.; *or*, one G. H., agent for the said C. D.:] —‡ an order [of Court, *or*, of the Honorable (*Judge*) at Chambers,] having been made, dissolving the attachment, after the entry of special bail. *See No.* 122.

297. *Held until Clerk certified entry of special bail.*

(*As in No.* 296 *to* —‡): the (annexed) certificate of the Clerk having been delivered to me, shewing that special bail had been entered, whereby the attachment was dissolved. *See Note to No.* 122.

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a 1839, 11 Stat. 30 § 13: 290 § 1. See Nos. 294—300, and notes to them.

b A particular description of the articles attached. See Note to No. 247.

c See 1 McC. 403. Service by copy left not authorized.

d 1844, 11 Stat. 290 § 1. *Vide*, Moore et al. v. Byne et al., 1 Rich. 94, decided before Act of 1844; Byne v. Byne, 1 Rich. 442, decided after 1844.

Held until bond given to the Sheriff. 298.

(*As in No.* 296 *to* —‡): the said C. D., *(the defendant,)* having appeared and entered into bond to me with R. S. and U. W., sureties, to appear and answer the judgment and condemnation of the Court in this case. [a]

Held until sale under order: proceeds ready. Rescue, &c. 299.

(*As in No.* 295 *to* — †) held them until afterwards, on day I sold them under an order made by the Honorable *(Judge)* at Chambers: [b] [to-wit, the tract of land lying, &c. I sold to M. R., for dollars, the negro man Tom, to X. Y., for dollars, *or*, as will more fully appear by the account of sales in my Book of Sales.] Of the proceeds of sale, after payment of expenses, I applied dollars to the satisfaction of a Fi. Fa., K. L. v. the said C. D., older than this writ of attachment, and the balance of dollars, I have ready to be paid, as the Court may direct. (*See No.* 260.)

(*As in No.* 295 *to* —†) held them until (*rescue, as in No.* 229, *or, destruction, as in No.* 268.)

Delivery to the plaintiff under the 4th section of the Act of 1844, 11 Stat. 291, or delivery to assignees under the 5th section, may, when ordered, be made by the Sheriff: and of course, proper evidence in writing, by receipts and entries, would be preserved of either: but neither of these could ever take place before the return of the writ, so as to be included in that return. (See Nos. 37, 38, 125—127.)

Bond given under the 1st section of the Act of 1844. [c] 300.

(*As in No.* 293 *to*—*) And the said E. F., not having claimed on oath, as creditor in possession, the things attached as aforesaid, he entered into bond with O. and P., his sureties, not to waste or eloign the said property so attached, and to render a schedule thereof on oath to me as Sheriff, and to make due return to this writ according to law, and to surrender the property attached when thereto required by law, or by any order of Court made in pursuance of the Attachment law.

To be added, if schedule rendered. 301.

And afterwards, to-wit: , the said E. F., rendered to me the annexed schedule on oath.

Bond: under 1st section of Act of 1844. [c] 302.

This bond should be in a penalty double the sum sued for: that is, double the debt or damages mentioned in the writ with good security, such as the Sheriff will be responsible for: payable to the Sheriff, his successors in office and assigns, for the use of the plaintiff in the attachment, condition as follows:

Now the condition of this obligation is such, that if the above E. F., shall not waste or eloign the property which the said J. S., Sheriff as aforesaid, has attached in his hands, possession, custody, power or control, under the writ of attachment in the case of the said A. B.

a 1839, 11 Stat. 29 § 18. See No. 310 for Bond.

b See No. 36.

c 11 Stat. 290.

against C. D., the absent debtor, of which are the following articles, which have been actually attached, a part in the name of the whole, to-wit: [the articles mentioned in the schedule annexed, *or*, on a tract of land, &c.] and shall render a schedule, on oath, to the said J. S., Sheriff as aforesaid, and make due return to the writ according to law, and shall surrender the property attached as aforesaid, when thereto required by law, or by any order of Court made in pursuance of the attachment laws:—then this obligation shall be void, else to remain in full force and virtue.

Signed, sealed and delivered in presence of [L.S.] [L.S.] [L.S.]

The Sheriff may assign this bond to the plaintiff in attachment, and the plaintiff, or his assigns, may sue on it.

Assignment.

At the request of the within named , plaintiff in attachment, I assign the within bond to him and his assigns.

Witness my hand and seal, this day of &c.

In presence of J. S., Sheriff — D. [L.S]

Under the 2d section of the Act of 1844, 11 Stat. 290, [a] after the garnishee has been summoned, and either no goods have been actually attached, or goods attached have been left in his hands, after a claim on oath, [b] an affidavit by the plaintiff, or by some person duly authorized by him, such as is mentioned in the section, may be made and annexed to the writ of attachment with an order, (to be made probably by a Judge, or any Commissioner of bail,) and thereupon the Sheriff may cause the garnishee to enter into bond.

Returns upon this order.

303. *Non est inventus.*

I have made diligent search for the garnishee E. F., named in the annexed order, and have not been able to find him within my district.

304. *Arrest and detention for want of bond.* [c]

I, [by self, *or*, by deputy,] did on under the annexed order, arrest the within named E. F., the garnishee, for the purpose of causing him to enter into the bond required, and he not having done so, I hold his body in custody.

305. Perhaps *prison bounds bond given, discharge under prison bounds or insolvent debtors Acts, discharge on supersedeas, death in prison, tarde, langnidus, rescue and privilege*, as in case of a bail writ, (Nos. 217—221: 226—231,) some, or all, would be good returns to this order. See 2 Hill 667: 11 Stat. 28 §13.

306. *Bond taken.*

Under the annexed order, I did on , [in my proper person, *or*, by Deputy,] cause the within named E. F. to enter into bond as required, in which his sureties are O. and W.

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a See Nos. 123, 124.

b See No. 294.

c See Poole v. Vernon, 2 Hill 567; 11 Stat. 28 §13.

If any schedule be returned to the Sheriff by the Garnishee, let mention of this be made in the return, and the schedule be annexed as in No. 301.

Bond: under 2d section of Act of 1844. [a] 307.

This bond should be in a penalty double the amount sued for: that is, double the debt and damages, or damages, mentioned in the writ; with security, such as the Sheriff will answer for, payable to the Sheriff, his successors or assigns; condition as follows:

Now the condition of the above obligation is such, that if the above bound E. F., (against whom as garnishee, in a case of attachment, A. B. against O. D., an order founded upon an affidavit, annexed to the writ of attachment has been granted under the 2d section of the Act of the General Assembly in such case made and provided, and entitled "an Act to amend the attachment laws of the State," passed in 1844:) shall well and truly make the returns required by the said Act, and surrender and deliver according to law, the property of the said C. D., the absent debtor, which, since the lodgment of the attachment writ aforesaid, hath been in the hands, possession, power, or control of the said E. F.—then this obligation shall be void, else to remain in full force and virtue.

Signed, sealed and delivered in presence of [L.S.] [L.S.] [L.S.]

Assignment of Bond. 308.

To be endorsed on it.

..... District.

At the request of A. B., (the plaintiff,) I hereby assign the within bond to him and his assigns.

Given under my hand this day of A. D.

J. S., Sheriff— D.

Notice against garnishee failing to make the return required under 3d section of Act of 1844. [b] 309.

To be served two days before motion for judgment against garnishee, personally or by copy posted.

Returns thereon.

Notice served personally.

I, [in my own person, *or*, by Deputy,] on , delivered a copy of this notice to the within named E. F., garnishee.

Copy posted.

The within named E. F., garnishee, being absent from this State, [*or, perhaps*, my district,] I did, on , post a copy of this notice on the door of the Court-house in my district.

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a 11 Stat. 290.

b 11 Stat. 290.

310. *Bond to the Sheriff: replevying goods attached.*

By the 18th section of the Sheriff's Act of 1839, 11 Stat. 30, it is provided, that, "in case any defendant in attachment shall appear while the goods or effects attached are in possession of the Sheriff, and before judgment shall have been rendered, and shall enter into bond, with good security to the Sheriff, to appear and answer the judgment and condemnation of the Court, the Sheriff shall deliver the goods and effects aforesaid to such defendant, and the said bond so to be executed, shall be assignable to, and may be sued in behalf of the plaintiff, as a bail bond may be." What is meant by the first "*appear*," is doubtful. This provision was made before the Act of 1843, 11 Stat. 257, which, first authorized a defendant in attachment to appear in another mode than by entering special bail, (see 119—122) If special bail were given to the Clerk under the 11st section of the Clerk's Act of 1839, 11 Stat. 77, the bond to the Sheriff would seem to be unnecesaary.

In a proper case, care should be taken to make the bond in a penalty double the sum sued on, payable to the Sheriff, his successors or assigns, with such security as the Sheriff is willing to answer for; and condition, that the defendant shall in the case wherein the goods were attached, appear and answer the judgment of the Court.

The assignment must be like that of a bail bond, under seal, and in the presence of two witnesses. (See No. 314.)

Trover.

311. *Order in Trover.* [a]

Under an order made, requiring the Sheriff to cause the defendant, in an action of Trover, to give bond for the production of the chattel sued for, (1839, 11 Stat. 76 §20: Trover Act of 1827, 6 Stat. 337,) the returns of the Sheriff will be similar to those which apply to the preceding order under the 2d section of the attachment law of 1844. (Nos. 303—306.) Trover bond taken, injunction, discharge by order of plaintiff, order to stay, non est inventus, arrest and detention, arrest and rescue, arrest and death, languidus, privilege, tarde, discharge under prison bounds or insolvent debtors Acts, and probably prison bounds bond taken, would be good returns. See 2 Hill 667: 3 Rich. 143; 11 Stat. 28 §13.

312. *Bond: under order in Trover.* [b]

This bond should be in a penalty equal to double the value of the chattel as sworn to, payable to the Sheriff, his successors or assigns, with sureties such as the Sheriff is willing to answer for, conditioned as follows:

Now the condition of this bond is such, that if the above C. D., (the defendant) who has been sued in the Court of Common Pleas for district, in an action of Trover, by A. B., plaintiff, for a certain chattel, to-wit: a negro man named Jack, shall produce the said chattel, so sued for, to satisfy the said plaintiff's judgment, in case the said plaintiff should recover in the said action: then this bond shall be void, else to remain in full force and virtue.

Signed, sealed, and delivered in presence of [L.S.] [L.S.] [L.S.]

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a See No. 131.

b As to the right of the surety under this bond to surrender to the Sheriff, either the defendant, or the chattel sued for, see Brown v. Spann, 3 Hill 324. The defendant is not liable for the natural deterioration of the chattel, arising from ordinary use. Floyd v. Ervin, 1 Strob. 437.

The Sheriff cannot retake the defendant for insufficiency of the sureties. Dud. 57. The bond may be discharged by the plaintiff. 3 Rich. 142.

Bail. [a] 313.

Under an order for *bail, pending an action,* (6 Stat. 337,) the returns are similar to those which are made under a bail writ.

See, *for the form of a bail bond,* 14th section of Sheriff's Act of 1839, 11 Stat. 29. Care should be taken to describe correctly, "the plea expressed in the process of the plaintiff: as "to answer to A. B., the plaintiff in a Sum. Pro.—"in a plea of debt"—"in a plea of assumpsit"—"in a plea of covenant"—"in a plea of detinue"—"in a plea of case"—"in a plea of trover"—"in a plea of trespass vi et armis." [b] The *time of appearance* should always be exactly set down, and must be to the term, next after the execution of the bond, except where the service of the writ, arrest and execution of the bond, are all between return day and Court, and then the second term afterwards is the time.[c]

Assignment of Bail Bond. 314.

To be endorsed on the back of the bond. 11 Stat. 30 § 23.

As Sheriff of district, [and successor of former Sheriff of the said district,] I assign this bond to plaintiff in the action wherein it was taken, according to the statute in such case made and provided.

Done in presence of J. S., Sheriff — D. [L. s.]

("two credible witnesses.")

The Sheriff should take a receipt for the bond when he delivers it.

Render by Bail. 315.

Bail bonds may be taken, not only under arrest made by virtue of writs and orders requiring bail, but in cases of detention after render by bail, *toties quoties:* 11 Stat. 29. For the law before that Statute, see Chiswell v. Ellzey, Rice's L. R. 29.

The render may be made to the Sheriff without previous order of the Court, at any time before the end of the term to which the service of effective process against the bail has been returned. If the render be made after the return of Ca. Sa. there must be an order of Court to confirm it. "The Sheriff has the right to take time for all necessary enquiries, and (after ascertaining the right of the bail to render and his right to receive,) to require that the body be delivered in the jail, with exact notice of the case in which it is rendered. The bail, on their part, have a right to require the means of distinctly proving what has been done, of which none can be so apt as a receipt from the Sheriff, containing all necessary particulars. Prudent men will, in general, take care that written evidence be had on both sides." Glover v. Gomillion, 2 Rich. 556: see Bomar v. Poole, 2 Speer 11J; Meyers v. Centre, 2 Strob.

Acknowledgment. 316.

To be signed by the principal, rendering himself in discharge of his bail, or by the bail, rendering their principal in their own discharge: and to be kept by the Sheriff.

A. B..., v. C. D..., } Action of assumpsit. In the Common Pleas. District. Writ lodged, not yet returned, *or*, On Issue Docket, *or*, Judgment entered and Ca. Sa. lodged.

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a See Nos. 128, 129.

b See Murrell v. Halbert, 1 Bail. 238; Treasurers v. Barksdale, 1 Hill 272.

c 1 Speer 295: A Sheriff is compellable under the Stat. of Henry 6, P. L. No. 1 p. 8, (not in the Statutes at Large,) to take no less security on a bail bond, than two responsible persons of his district. If he take only one, or take one or more who do not reside in his district, the bond will not be void: but after the bail have been fixed he will be answerable to the plaintiff for any damage occasioned by his misconduct, wilful or negligent. See Dickson v. Coward, 3 Rich. 49; Bennet v. Brown, 1 Strob. 303: Teasdale v. Kennedy, 1 Bay 322; Teasdale v. Hart, 2 Bay 173.

E. F. and G. H., Bail for C. D.

C. D. rendered himself this day in discharge of his bail in this case. day of C. D.

Witness : *or*, .

C. D. has been rendered this day by E. F., one of his bail, in this case. day of

Witness :

317. A receipt in like form should be signed by the Sheriff and given to the principal or bail that makes the render.

If the render be intended to apply to more than one caae, all the cases so intended should be carefully stated.

318. *Returns of render on mesne process.*

If the render be made before the return of the mesne process under which the bail was taken, it should be subjoined to the return of arrest and bail taken: thus:

Afterwards, to-wit, on day of the said having [rendered himself in discharge of his bail, *or*, been rendered by his bail,] I detained him and —* hold him in custody.

319. (*As in No.* 318 *to*—*) him safely kept until he again gave bail according to law.

Enter on writ, "names of bail in second bail bond."

Other returns, *prison bounds bond taken, discharge under prison bounds Act, death in prison, discharge on supersedeas.* &c. as after arrest on bail writ.

320. *Returns of render on Ca. Sa.*

If the render be made before the lodgment of Ca. Sa., or after its lodgment and before its return, it must be entered on the Ca. Sa., thus:

The body of the within named , being in my custody, under the render [made by himself in discharge of his bail, *or*, made of him by his bail,] at the lodgment of this writ, was detained by virtue of this writ —* and I now have it in custody.

321. (*As in No.* 320 *to*—*) and I safely kept it until (*prison bounds bond taken, discharge under prison bounds or insolvent debtors Acts, supersedeas, death, &c., as after arrest under Ca. Sa.*)

Habere facias possesionem : with Fi. Fa. or Ca. Sa.

322. *Possession delivered.*

By virtue of this writ, [in person, *or*, by Deputy,] on , I delivered to the within named A. B., possession —* of the tract of land within described, as I am within commanded.

323. *Possession delivered of an undivided share.*

(*As in No.* 322 *to* —*) of an undivided fifth part of the house and lot within described, as I am within commanded.

Return of Fi. Fa. or Ca. Sa., joined with hab. fac. poss. 324.

To either of the above returns, 322, or 323, as the case may be, add:

And [in person, *or*, by &c.] on , I levied &c., [*returns as on Fi. Fa.*] *or*, I took the body, [*if Ca. Sa. for damages and costs*]: *or*, The within named hath no goods, &c. (*as in No.* 242) *or*, The within named is not to be found, &c. (*as in No.* 284.)

Other returns as on Fi. Fa. and Ca. Sa. according to the circumstances.

No person came to point out land and receive possession. 325.

Since the writ of *Habere facias possessionem* was delivered to me, I have always been ready and willing to execute the same: but neither the said A. B., nor any other person on his part, hath ever come to me, to shew me the tenements within mentioned, or any part thereof, or to receive possession of the same, or any part thereof from me.

On Fi. Fa. or Ca. Sa., returns as above.

Bond indemnifying the Sheriff for selling goods on a Fi. Fa. 326.

Penalty, twice the value of all the goods taken; payable to J. S., (the Sheriff,) his executors, administrators and assigns: by the principal and sureties, jointly and severally, their heirs, executors, and administrators: dated &c.

Recital.—Whereas, the above named J. S., as Sheriff of district, by virtue of a writ of Fi. Fa., in the case of A. B. against C. D., lodged with him on , hath seized and taken divers goods and chattels, to-wit: , as the proper goods and chattels of the said C. D., and the said goods and chattels have been claimed by E. F., who hath given to the Sheriff notice, not to proceed to a sale of the said goods and chattels, or to pay over the money which may arise from the sale thereof, to the said A. B.; and the said A. B. hath applied to the Sheriff, and requested him, notwithstanding such claim and notice, to sell the said goods and chattels, and pay over the money thence arising to the said A. B., under the Fi. Fa. aforesaid, which the said J. S. hath consented to do upon being indemnified for so doing:

Condition.—Now the condition of the above obligation is such, that if the above bound A. B., his heirs, executors and administrators, do and shall, from time to time, and at all times hereafter, well and sufficiently save harmless and keep indemnified, the said J. S., his deputies, officers and agents, and each and every of them, of, from and against all losses, costs, charges, damages, and expenses, which he, they, or any of them, shall or may sustain, expend, or be put to, for, or by reason of seizing or selling the said goods and chattels, or any part thereof, or paying to the said A. B. the money which may arise from the sale thereof, or any part thereof, towards satisfaction of the Fi. Fa. aforesaid, and, also, from and against all actions, suits or proceeding, at law or equity, which now are, or hereafter shall be brought or had, rightfully or wrongfully, against the said J. S., his deputies, officers and agents, or any, or either of them, for or by reason of the seizing, selling or paying as aforesaid, or for, or by means of any other

cause, act, matter or thing whatsoever, relating thereto, or to the execution of the said Fi. Fa.—then this obligation shall be void, else to remain in full force and effect.

Signed, sealed and delivered in the presence of [L.S.] [L.S.] [L.S.]

327. *Bond indemnifying the Sheriff for abandoning Goods, and returning nulla bona.*

Penalty as above. (No. 326.)

Recital.—Whereas, the above bound J. S., as Sheriff of district, hath, under a writ of Fi. Fa., in the case of A. B. against C. D., lodged in his office on , seized and taken divers goods and chattels, to wit: as the proper goods and chattels of the said C. D.: and whereas, the above bound E. F., hath given notice to the said Sheriff, and claimed the said goods and chattels, and requested the said Sheriff to abandon, and quit possession of the said goods and chattels, and deliver them to the said E. F., and to make return on the said Fi. Fa. of *nulla bona;* which the Sheriff, honestly believing[a] that the said goods and chattels do really belong to the said E. F., but entertaining some apprehensions, by reason of the doubtfulness of the title thereto, is willing to do, upon the said E. F., indemnifying him for so doing:

Condition.—Now the condition of the above obligation is such, that if the above bound E. F., his heirs, executors, and administrators, do and shall, from time to time, and at all times hereafter, well and sufficiently save harmless, and keep indemnified, the said Sheriff, his deputies, officers, and agents, and each and every of them, of and from all losses, costs, charges, damages, and expenses, which he, or they, or any of them, shall, or may sanction, pay, or be put to, for, or by reason of abandoning, quitting possession, and delivering to the said E. F., the goods and chattels aforesaid, and returning *nulla bona* on the said Fi. Fa.: and, also, of, from, and against all actions, suits, and proceedings, at law or equity, whatsoever, which now are, or hereafter shall be brought, either rightfully or wrongfully, by the said A. B., or by any person whomsoever, against the said Sheriff, his deputies, officers, and agents, or either, or any of them, for, or by reason of the abandoning, quitting possession, and delivering the said goods and chattels to the said E. F., and returning *nulla bona* on the said Fi. Fa., or for, or by reason of any other act, matter or thing whatsoever relating thereto, or to the execution, or return of the said writ of *fieri facias*: then this obligation shall be void, else to remain in full force and virtue.

Signed, sealed and delivered in the presence of [L.S.] [L.S.] [L.S.]

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a Query. Whether even the honest belief of the Sheriff, that the goods belong to the obligor, would make this a good bond. See 2 Bay 67 : 3 Hill 170 : 2 Speer 19.

Prison bounds bond, in case of mesne process. 328.

THE STATE OF SOUTH-CAROLINA, }
District. }

Know all men by these presents, that we C. D., E. F. and G. H., are held and firmly bound to J. S., Sheriff of district, in the sum of [a] dollars, to be paid to the said J. S., his executors, administrators, successors in office and assigns, to which payment well and truly to be made, we bind ourselves, and every of us, our and every of our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of A. D. 18 .

Whereas, the above bound C. D., has been arrested by the above named J. S., Sheriff, under a writ of capias ad respondendum, [*or*, Sum. Pro.] with an affidavit [*or*, order,] for bail annexed thereto at the suit of [*or*, under an order requiring bail to be taken in a suit pending between A. B., plaintiff, and the said C. D., defendant, *or*, under an order requiring bond to be taken in a certain action of trover brought by A. B. against the said C. D.,—*or, perhaps*, under an order requiring bond to be taken from the said C. D., as garnishee, in a case of attachment wherein A. B. is plaintiff, and E. F., absent debtor, is defendant,] and the said C. D. is desirous of having the benefit of the prison bounds:

Now the condition of this obligation is such, that if the said C. D. shall not go, or be without the rules, bounds or limits of the prison for district aforesaid, until he shall be discharged according to law, then this obligation shall be void—else to remain in full force and virtue.

Signed, sealed and delivered } [L.S.]
in the presence of } [L.S.]
[L.S.]

For form of bond, see Anderson v. Foster, 2 Bail. 500.
This bond of prisoner under mesne process is not assignable. Peek v. Glover, 1 N. & McC. 582. See Note to 329.

Prison bounds bond—in case of a prisoner in execution on any civil process. 329.

THE STATE OF SOUTH-CAROLINA. }
District. }

Know all men by these presents, that we C. D., E. F. and G. H., are held and firmly bound to J. S., Sheriff of district, in the penal sum of *(twice the amount to be collected by the execution,)* dollars, to be paid to the said J. S., Sheriff, as aforesaid, his executors and administrators, successors in office and assigns: to which payment well and truly to be made, we bind ourselves and every of us, our and every of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of A. D. 18 .

Whereas, the above bound C. D., was on day of arrested by the above named J. S., Sheriff, under a writ of capias ad satisfaci-

[a] Twice the sum sworn to in plaintiff's affidavit.

endum, which issued from the Court of Common Pleas for district, in a case wherein A. B. was plaintiff, and the said C. D. and one K. L., were defendants, and was lodged in the office of the Sheriff aforesaid, on : and the said C. D. is desirous of having the benefit of the prison bounds:

Now the condition of this obligation is such, that if the said C. D. [a] shall remain within the rules, bounds, or limits of the prison of district aforesaid, until he shall be thence discharged by law: and shall also, within forty days from the date hereof, render to the Clerk of the Court of this district, a schedule on oath, or affirmation, (agreeable to the form of his religious persuasion,) of his whole estate, or of so much thereof as will pay and satisfy the sum due on the writ of execution aforesaid; and shall also, [b] at the expiration of the notice prescribed under the insolvent debtors and prison bounds Acts, respectively, assign and surrender, as far as in his power, the property mentioned in said schedule :—then this obligation shall be void, else to remain in full force and virtue.

Signed, sealed and delivered in presence of [L.S.] [L.S.] [L.S.]

The bond must be given within forty days from the arrest. §3 Act of 1788, 5 Stat. 78. *Semb. contra*, Muldrow v. Bacot, 2 McMul. 362, if it is not intended to apply for relief under the Act of 1759.

The ASSIGNMENT of a prison bounds bond, given by a prisoner in execution, may be as of a bail bond, or with less formality: with one witness, or without a witness, as no Statute has prescribed the form. See Miller v. Tollison, Harp. 339; Powers v. Segur, 2 Bail. 420. The assignment may be made by successor Sheriff. 2 Rich. 95. It must be to the plaintiff: but, where the bond was defective, evidence *aliunde* was received to shew that the assignee was plaintiff.

For former liability of Sheriff as to the sureties. See Yates v. Yeadon, 4 McC. 18. By Act of 1840, 11 Stat. 121, Sheriff is now liable for the solvency of sureties on prison bounds bonds, as for the solvency of sureties to bail bonds. See Bennett v. Brown, 1 Strob. 303.

The sureties, where the defendant is in execution, cannot discharge themselves by a surrender of the defendant within the forty days:—Sheriff has no right to receive him. Miller v. Bagwell, 3 McC. 429: see 2 Bay 203: 3 Hill 324. The sureties are not discharged by the defendant's being committed to jail, after the forty days, for want of a schedule, 3 McC. 429, and Headman v. O'Niel, 2 Bail. 190. See Dixon v. Vanezara, 1 McC. 373, where these sureties are called bail, and principles applicable to bail are applied to them.

This bond is a substitute for the body. By proceeding on it, the plaintiff waives his rights under a Fi. Fa. 1 Rich. 78.

In computing the forty days, the day of the date is excluded. 2 Rich 95. The extreme sickness of the prisoner has been taken as an excuse for his not rendering his schedule within time. 2 Rich. 322. So also, the sickness of the attorney, 3 McC. 14.

See Note to 147; No. 146 and Nos. 133—149.

Replevin.

330. *Replevin Bond.* [c]

By A. B., the tenant, whose goods have been distrained, and two responsible persons as sureties. Payable to J. S., the Sheriff, his certain attorney, executors and administrators, successors in office, and assigns. Penalty, double the value of the goods distrained, to be ascertained by the oath of one or more creditable and disinterested witnesses, which oath the Sheriff may administer.

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a 1788, 5 Stat. 78.
b 1841, 11 Stat. 153.
c 1808, 5 Stat. 565; 1839, 11 Stat. 36 §55.

The Condition of this obligation is such, that if the above bound A. B., shall, in the Court of Common Pleas for district, prosecute with effect, and without delay, his suit against C. D. (*the landlord,*) [and E. F. (*the bailiff,*)] for the taking and unjustly detaining of his goods and chattels, to-wit: (*copy the enumeration of the goods distrained from the writ of Replevin.*) And, if a return of the said goods and chattels shall be adjudged, before any deliverance be made of the distress, shall make return of the same: [[a] and in case the same shall be insufficient to satisfy the rent for which the distress has been made, or in case the same shall be eloigned, shall pay the full amount of the rent aforesaid, and all costs of suit which may be adjudged against the said A. B. in the suit aforesaid:] [[b] and, moreover, if the said A. B., shall well and truly keep harmless and indemnified the said J. S., Sheriff as aforesaid, his deputies and agents, touching the replevying and delivery of the said goods and chattels, and also, from and against all actions, damages and costs that may arise therefrom,] then this obligation shall be void, else to remain in full force and virtue.

Sealed, &c.

Concerning this bond, and the effect, which one, not formal, may have, see 1 N. & McC. 331; Harp. 215.

Assignment of bond. 331.

To be endorsed on bond.

——— District. At the request and costs of *(the avowant, or person making cognizance,)* I hereby assign this bond to the said (avowant or person.) Witness my hand and seal, this day of

In presence of J. S., Sheriff. [L.S.]

("two or more credible witnesses.")

This bond, even before the Statute of 1839, which expressly authorizes the assignment, could be sued in the name of the assignee: 1 McC. 300: 2 McMul. 196: and, although no Statute authorizing and regulating the assignment had been expressly enacted, the 23d section of Stat. Geo. 2. (2 Stat. 579,) seems to have been adopted in practice. See Pemble v. Clifford, 2 McC. 31: Reed v. Stoney, 2 Rich. 402: Rogers v. Brown & Sharlock, 1 Speer 236. In like manner the Stat. of 17 Chas. 2 ch. 7, and other British Statutes, concerning Replevin, not expressly made of force, seem to be adopted. See 1 N. & Mc. 32, and cases referred to in those above cited.

Return of writ of Replevin. Goods replevied, and writ served. 332.

By &c., on &c., I replevied the goods and chattels within mentioned, and delivered them to the within named A. B., he having executed a Replevin bond, with O. P. and L. G, his sureties: on the same day and by the same Deputy, I delivered a copy of this writ to the within named E. F., and left a copy for the within named C. D., at his most notorious place of residence. (*See Nos.* 213, 223.)

For important distinctions between replevin and other actions, as to the time of filing the declaration, the return of the Sheriff, the appearance of the defendant, judgment of *non pros.*, and inquiry after judgment, see the Act of 1808, 5 Stat. 565, the cases of Dug-

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a This clause, required by the Act of 1808, is not contained in the Act of 1839, but is conformable to the liability which, after a verdict for rent in arrear, rests on the sureties, and should be inserted.

b This clause is inserted in late English books of practice—can do no harm, but may be omitted.

gan v. England, Harp. 215, and Murphy v. Sumner, 1 Hill 216, and cases there cited. Every writ of Replevin is returnable immediately; and the declaration must be filed one month from the lodgment of the writ, whether it be returned or not; the Court cannot extend the time. Abatement by death of plaintiff, Harp. 131. For goods not liable to distress, see Note to No. 231.

333. *Return of writ of Replevin. Elongata.*

Before the coming of this writ to me, the goods and chattels within mentioned, were conveyed away by the within named C. D., to places to me unknown: Wherefore, I cannot cause the same to be delivered to the said A. B., as I am within commanded.

So there may be return of part replevied and *elongata* as to part. 2 N. & McC. 444.

334. *Return of writ of Replevin—property claimed—Quære?*

The within named A. B., executed a Replevin bond with responsible sureties, and I was ready to replevy the goods and chattels as within commanded: but, on the within named C. D., in his own proper person claimed that the said goods and chattels were of his own property before the distress made thereof: Wherefore, until the claim of property be determined, I forebore to replevy as within I am commanded. (*See* 3 Black. Com. 148.)

335. *Retorno habendo.*

May be returned, goods returned as commanded, or *elongata*, either of them, in whole or in part. If the *retorno habendo* be combined with a Fi. Fa., it is usual to return *elongata*, and proceed to levy and sell as under a common Fi. Fa. If there are, however, other writs of Fi. Fa. older than the *retorno habendo*, but junior to the distress, the goods distrained (as in custody of the law;) will be subject to the *retorno habendo cum fi. fa.*, in preference over the other writs. Harris v. Clayton, 1 McMul. 194: 3 McC. 43.

336. *Withernam.* [a]

May be returned goods of the value required, taken and delivered as commanded, or *nulla bona:* either of them, in whole or in part.

Writ of second deliverance.

May be returned, goods delivered, or *elongata:* either of them, in whole or in part.

Habeas Corpus. [b]

337. *Return of Habeas Corpus directed to the Sheriff. Body ready with the cause.*

STATE OF SOUTH-CAROLINA, }
District. }

I, J. S., Sheriff of the said district, do certify and return to [the Honorable one of the Law Judges of the said State, *or*, to A. B. and W. P., Esquires, two of the Magistrates of the district aforesaid,] named in the writ to this schedule annexed, that, before the said writ came to me, to-wit: on the day of in the year within written,

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a 2 N. & McC. 444. 1 McMul. 194.

b 31 Chs. 2: 1674, 1 Stat. 117: Magistrate's Act 1839, 11 Stat. 14 §6, 15 §9: Sheriff's Act 1839, 11 Stat. 33 §43: 1 McMul. 456. Dud. 295.

C. D. in the said writ named, [was taken, and in the jail of the district aforesaid, is detained by virtue of a writ of *capias ad satisfaciendum*, which is in these words, to-wit, "The State of South-Carolina, &c., (*set forth the writ and all endorsements verbatim*,) *or*, was committed to my custody, by virtue of a certain warrant to the tenor and effect following (*warrant, verbatim*)]: and these are the causes of the [taking and] detaining of the said C. D., whose body I have here ready, as by the annexed writ I am commanded.

J. S., Sheriff.

Indorsement on writ.

The execution of this writ appears in the schedule hereunto annexed.

J. S., Sheriff.

Excuse. Languidus in prisoná. 338.

——— District: to-wit:

I, J. S., Sheriff of the said district, do certify and return, that C. D., in the writ to this schedule annexed named, was before the coming to me of the said writ, to-wit: on [taken and] detained in the jail of the district aforesaid, by virtue of a certain writ, *or*, warrant, *or* order, to the tenor and effect following: (*copy verbatim*,) and that the said C. D. remains in the jail aforesaid, under my custody, so languid, that, without great peril and danger of his life, I cannot have his body at the day and place in the said writ contained, as therein I am commanded.

J. S., Sheriff.

Jail destroyed by fire. 339.

——— District: to-wit:

I, the within named Sheriff of the said district, do hereby return, that before the coming of this writ to me directed, to-wit, on , the jail of the said district, at , in which C. D., named in the said writ was then detained, was destroyed by fire, which I could not prevent, and the said C. D. escaped and is still at large, against my will and consent: Wherefore, the body of the said C. D. I cannot have as I am within commanded.

J. S., Sheriff.

Of the writ of Habeas Corpus, with signature and endorsements, an exact copy should be taken. The writ directed to the Sheriff may be served by the Coroner, or any discreet person, who can make the affidavit of service, to found an attachment upon in case a satisfactory return of the writ be not made. The writ, directed to any other person, should be lodged with the Sheriff and served by him: (Sheriff's Act 1839, 11 Stat. 27 §6, Writ Book.) The service in every case should be by delivery; and it seems better that the original should be delivered, to be returned with the cause; and that the affidavit, shewing service, should be on the copy, and should declare, that the original signed by the Judge or Magistrates who granted it, had been delivered on a day certain.

Returns by Sheriff to rule to shew cause why money has not been made and paid over. 340.

See 1846, 11 Stat. 349: 1839, 11 Stat. 30 §19, 20, 21.

The Court will not proceed against a Sheriff in a summary way, where the right is not clear. 2 Rich. 527, 530.

An issue may be ordered to decide the rights of conflicting claimants, (2 McMul. 150) —otherwise, an order against a Sheriff is no protection to him against a suitor not before the Court. See No. 45.

By sale of the whole of the defendant's property before the day at which he is ordered to be attached, a Sheriff may so purge the contempt, as to be entitled to a discharge of the order: even if the execution under which he was ruled be not satisfied. Conner v. Archer, 1 Speer 89: see 1 Bail. 646: 1 McMul. 316.

A Sheriff under attachment for contempt, after purging the contempt, is entitled to the benefit of the insolvent debtors acts. 1 Bail. 605.

SOUTH-CAROLINA, }
District. }

The answer and return of J. S., Sheriff of district, to a rule which has been served upon him at the instance of requiring to shew cause *(copy from rule.)* I, J. S., answer on oath as follows:—*

Money made—proceedings to set aside judgment. [a]

I have made this money as required by the said writ of Fi. Fa., and have the same ready to be paid to the said A. B., if the Court shall so order. I received notice (a copy of which is hereunto annexed,) from Esquire, attorney for E. F., that E. F. alleged on oath, that the judgment, upon which the said writ is founded, was confessed in fraud of him, the said E. F., and other creditors of the said C. D.: and that the said E. F. had filed a suggestion in this Honorable Court, for the purpose of establishing the fraud, and setting aside the said judgment, upon which issue has been joined, and a speedy trial is expected.

341. *To rule by assignee of Fi. Fa. Money applied to Fi. Fa. against assignor, before assignment.* [b]

As in No. 340 *to* —*) I made the money as required by the said writ of Fi. Fa., and on before the day when, as I am informed and believe, the assignment of the said Fi. Fa. was made to the said G. H., I applied the said money towards satisfaction of a Fi. Fa., in the case of K. L. v. C. D., which was lodged in my office on

342. *Short time, and notice to set aside Fi. Fa.* [c]

(As in No. 340 *to* —*) I was ready and willing to proceed to the execution of the said writ of Fi. Fa., but after its delivery to me, there being barely time for levy and sale, I received on , from the said C. D. notice, that he had by his own affidavit, and affidavits of other persons, shewn sufficient cause for setting aside the said writ of Fi. Fa., and would at this term, make a motion for that purpose: Wherefore, I delayed until the decision of this Honorable Court might be had.

Jurors.

343. *Summons for a Juror.* [d]

To be served personally, or left at the most notorious place of residence.

THE STATE OF SOUTH-CAROLINA: District.

A. B. *Sir*,—You are hereby summoned, to be and appear personally before the Court of Common Pleas and General Sessions, for the

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a 1 McMul. 179.

b 1 Strob. 418: 2 Rich. 4, 323: 1 Bail. 40: 1 McMul. 310. Unnegotiable Note, passed by verbal transfer. Dud. 111.

c Dud. 292.

d 1839, 11 Stat. 34.

district aforesaid, to be holden on at next, at 10 o'clock in the forenoon, to serve as a [Grand, *or*, Petit] Juror.

Herein fail not, on pain of forfeiting [a] twenty dollars, and seven per cent. on your general tax for the year last past.

day of 18 . J. S., Sheriff District.

Return of writ of venire facias. [b] 344.

THE STATE OF SOUTH-CAROLINA, }
District. }

I, J. S., Sheriff of the district aforesaid, do hereby certify and return, that the execution of the [within *or*, annexed] writ, appears by the schedule [thereto annexed, *or*, above written:] and we, the said J. S., and O. P. and S. K., deputies of the said J. S., severally swear, that the statement contained in the first and second classes of the said schedule, of different services, by us respectively made, are true: and that, after diligent search, we have not found the persons named in the third class, nor ascertained that they, or any of them had any dwelling house or usual place of residence, in this district.

J. S.
Sworn to day of } O. P.
Before } S. K.

SCHEDULE.

FIRST CLASS.—Such of the persons named in the panel to the writ annexed, as were served personally: every of whom was served by the Sheriff or Deputy, whose name is placed opposite to his name, and at the time there mentioned.

Jurors Names.	By whom served.	When served.
A. W.	J. S.	1 June 1843.
R. G.	O. P.	4 June 1843.
S. D.	S. K.	3 July 1843.

SECOND CLASS.—Such of the persons named in the panel to the writ annexed, as were served by summonses left at their houses respectively: every of whom, was served by the Sheriff or Deputy, whose name is placed opposite to his name, leaving a proper summons at his house, or usual place of residence, on the day there mentioned.

Jurors Names.	By whom served.	When served.
O. T.	O. P.	1 July 1843.
T. E.	S. K.	2 June 1843.

THIRD CLASS.---Such of the persons named in the panel to the writ annexed, as could not after diligent search be found.

M. R.
P. G.

Domestic Attachments.

Domestic Attachments are regulated by the 18th sect. of the Magistrate's Act of 1839, 11 Stat. 18. Great care should be taken, that a proper bond be executed; that the oath be positive, not alternative. (Hagood v. Hunter, 1 McC. 511:) and that the attachment be well drawn, properly directed, and properly returnable. Where the demand does not exceed twenty dollars, the whole proceedings are in the Magistrate's Court, whether 345.

a 1799, 7 Stat. 291.
b 1839, 11 Stat. 34.

the attachment be foreign or domestic. Where the demand is above twenty dollars, a domestic attachment may be issued by a Magistrate, and must be returnable to the next Court of Common Pleas for the district where it is issued, "to be holden at on Monday next"—directed to "either Sheriff or Constable of the district," if the demand be between twenty and eighty-five dollars seventy-two cents;—"to the Sheriff of the said district," if the demand be above eighty-five dollars seventy-two cents.

In case of a domestic attachment, the oath must be in one of these three forms: 1st. That the debtor is removing out of the district privately. 2d. That the debtor absconds and conceals himself, so that the ordinary process of law cannot be served upon him. 3d. That the plaintiff has just grounds to suspect, and does verily believe, that such debtor intends to remove his effects. [*Query: What removal!*]

As to questioning proceedings upon motion, see Harper v. Scuddy, 1 McMul. 264, and cases cited.

Under a domestic attachment goods and chattels only can be levied on: not lands: see 2 McC. 208, and the above Act. Query: as to books of account. See Chors v. Hill, 3 McC. 338.

Under any domestic attachment, garnishees may be summoned: the distinction recognized in Chambers & Sadler v. McKee, 1 Hill 229, having been overruled by the Act. See 117—127: 290—311, and notes to them.

If a domestic attachment, properly issued, be lodged with a Sheriff, he should proceed to execute it according to law, and in returning service, should follow as nearly as possible the words of the Act before cited.

346. *Return of goods seized, which were found when no person was in possession.*

By virtue of this writ [in my own person, *or* by my regular, *or* special Deputy,] at o'clock, A. M., on day , I levied upon and seized of the goods and chattels of the within named C. D., a negro man, Tom, a bay horse, and a wagon, which articles were found at the plantation of the said C. D., in my district, when no person besides the said C. D. had possession thereof, or laid claim thereto: and the said articles —* I now hold.

347. *Other returns.*

(*As in No.* 346 to —*) I held until [*special bail: see Nos.* 296, 297. *Bond to Sheriff: see No.* 298. *Sale under order: see No.* 299. *Rescue: see No.* 229. *Destruction: see Nos.* 266---268.]

348. *Returns of goods attached in the hands of a garnishee: and service of the garnishee.*

By virtue &c., at hour on day, I [levied upon one gold watch of the proper goods and chattels of the within named C. D., in the hands of E. F., [a] and at the same time] summoned the said E. F. [by delivering to him a copy of this writ with a proper notice endorsed thereon,] to appear at the next Court, at the time and place within mentioned, to answer on oath, what he, the said E. F., may be indebted to the within named C. D., or what effects, belonging to the said C. D., he, the said E. F., may have at the time of making his return, or had at the time of serving this attachment.

If there be no levy, but service of a garnishee, what is between brackets will be omitted.

349. *Nulla bona and N. E. I.*, may be returned as in No. 290.

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a Not to be seized, unless possession be surrendered by E. F. See Moore & Davis v. Byne, 1 Rich. 94.

Special Executions.

350. *Return of Fi. Fa. upon forfeited recognizance: Fi. Fa. for fine, or Fi. Fa on bastardy bond.* [a]

The per cent. upon the tax of a juror must be ascertained by the Sheriff. Cheves 71; see militia executions, No. 351.

Levy, sale, application of money, and excuses for not executing, as upon other writs of Fi. Fa.

To authorize a Ca. Sa., the Sheriff or his Deputy, must return on oath.

1*st. Nulla bona,* *or,*

2d. The within named C. D. hath not within my district sufficient property, whereon to levy as within commanded. *or,*

3d. The within named C. D. refused upon demand to pay the sum of money within mentioned.

In levying and selling, the Sheriff must, to authorize the sale of a negro, specify, that by consent of the defendant he sold the negro; or thus:

Every other part of the personal estate of the said C. D. having been sold, and a sufficient sum not made, I sold the slave Tom, levied upon as before mentioned to R. W., for the sum of dollars.

351. *Militia executions.* [b]

The Sheriff must ascertain the tax of the defendant from the tax list in the office of the Clerk, and insert the aggregate amount of the fine. Levy and proceed as upon another Fi. Fa.: but if an arrest must be made, return:

C. D., the defendant, having neglected, [*or*, refused,] to pay the fine within mentioned, and the costs accruing: or, the defendant having failed to point out sufficient personal property to satisfy the fine within mentioned and costs: I, on by , Deputy, seized the said C. D., and committed him to jail: [afterwards he paid the said fine and costs: *or*, afterwards, on , he was released, upon his swearing before Esquire, Magistrate, that he was unable to pay the sum for which he stands committed.

352. *Tax executions.* [c]

Proceeding as upon other Fi. Fa.; the lands or goods taxed, being specifically liable for one year, in whose hands soever they may be, and the tax execution having also a general lien, as any other Fi. Fa. against the defendant.

These executions must be collected, or returned *nulla bona* within six months, under heavy penalties.

Injunction.

353. *Bond: For the return of property, upon notice of intention to apply for an injunction.* [d]

By C. D., the defendant, in execution, and two good sureties. Payable to the Sheriff, his successor and assigns. Penalty double the value of the personal property levied on.

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a 5 Stat. 13. Nos. 155, 159.

b 11 Stat. 196; Cheves 71; Riley's L. C. 193.

c 1843, 11 Stat. 247; 1839, 11 Stat. 37 §67. See 3 Rich. 27, 373, 316: all before the Act of 1843.

d 1791, 7 Stat. 279.

Recital.—Whereas, at the Term of the Court of Common Pleas for district, (which Term was adjourned within forty days last past,) A. B. recovered a judgment against the above bound C. D., for the sum of dollars, (besides interest and costs,) and under a Fi. Fa. issued thereon, J. S., Sheriff as aforesaid, has levied on, of the personal property of the said C. D., the following goods, to-wit: *(enumerate:)* which goods still remain unsold: And whereas, the said C. D., has given notice to the Sheriff aforesaid, that he means to file his bill in the Court of Equity, praying for a writ of injunction, to which notice is annexed an affidavit of such intent: and in conformity with the Act of the General Assembly in such case provided, desires, and is now to be permttted to receive back the goods levied on as aforesaid.

Condition.—Now the condition of this obligation is such, that if the said C. D., shall return in good order to the Sheriff aforesaid, the whole of the goods aforementioned, in case he, the said C. D., shall not procure from the Court of Equity, and within thirty days from the date hereof cause to be served on the Sheriff aforesaid, a writ of injunction commanding him to stay proceedings in the suit wherein judgment was recovered and Fi. Fa. issued as aforementioned; then this obligation shall be void, else to remain in full force and virtue.

Sealed, &c. C. D. [L.S.]
and [L.S.]
two sureties. [L.S.]

The Sheriff must enter the notice and affidavit in his books. If the bond be forfeited, the Sheriff may again seize and sell: upon defendant's failure to surrender, the bond is assignable to the plaintiff in the Fi. Fa., and no imparlance is allowed in the suit thereon.

Concerning Fi. Fa. under injunction, and its lien. See 1 Hill 69: 1 Rich. 145; Harp. 457.

354. An ordinary injunction bond is taken by the Commissioner in Equity, 1840, 11 Stat. 111; and is payable to the plaintiff at law; 1784, 7 Stat. 209: the Act of 1734, 7 Stat. 133, which required security to the Register or Master, having been limited to five years duration.

355. A *ne exeat* bond, too, is to be taken by the Commissioner. 11 Stat. 111. The Sheriff's proceedings under a *writ of ne exeat* should be in general similar to those under an order for a trover bond, except that the person taken, instead of giving bond to the Sheriff, is to be brought before the Commissioner to give bond, as one arrested under a *Bench warrant*, for a bailable offence, is carried before a Magistrate to give bail.

The returns upon *ne exeat writ*, bench warrant, or any other process requiring arrest, either for the purpose of detention, or of coercing something to be done, (11 Stat. 38 §13,) may according to circumstances, be framed from the forms given under Ca. Sa., (Nos. 284—290) or those under the 2d section of the Attachment Act of 1844. (Nos. 303—306.)

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356. *Subpœna ad respondendum in Equity.*

Must be served at least ten days before the appearance day therein expressed. 1808, 7 Stat. 306 §12.

Personal service upon an ordinary defendant may be returned as the like service of a writ of *capias ad respondendum*.

Service by copy left is, under the 2d Rule of Court of Equity, authorized "where the defendant cannot be found, but is within the State," and has within the Sheriff's district his "dwelling house, or most usual and notorious place of residence, or habitation;" which, in the case of the St. Pack. Co. v. Roger, Cheves Eq. R. 48, was held to apply to a defendant domiciled in the State, but temporarily absent therefrom, who obtained notice of the writ. In returning service by copy left, it is advisable for the Sheriff to say,—

Not being able to find the defendant, on &c., I left a copy at his dwelling house, [*or*, most usual and notorious place of residence.]

As to service on infants, married women and lunatics, let the Complainants' Solicitor be consulted.

Attachment for contempt. 357.

Should be executed and returned as a Ca. Sa.; except that enlargement upon a prison bounds bond should not be permitted until the contempt as been purged, and the order of the Court, from which the attachment issued, been obtained.

Rules, notices, interrogatories, (1 Strob. 199. 433; 3 Hill 10; 2 Rich. 119,) citations, and other mesne process, for either of the Courts of Ordinary, Law or Equity, not mentioned in any previous No., which by the 6th section of the Act of 1839, 11 Stat. 27, the Sheriff is required to enter in his writ book, should be served and returned: personal service in every instance being good, and any other mode of service being doubtful. See No. 236. 358.

For the Crier.

Form of opening Court. 359.

Oyez! Oyez! All manner of persons having business in this Court of Common Pleas and General Sessions for district, are required to give attendance, for now this Honorable Court is here holden.

Form of adjourning Court. 360.

Oyez! Oyez! All manner of persons having business in this Honorable Court may withdraw their attendance until ten o'clock to-morrow morning, to which hour the Court stands adjourned.

FINIS.

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